



7th Army Training Command



**LEADERS' GUIDE
TO**

COMMON LEGAL ISSUES

MAY 2005 EDITION

Preface

May 2005

The 7th Army Training Command, Legal Center (ATCLC) prepared this *Leader's Guide to Common Legal Issues* as a desktop reference for key leaders—primarily Company Commanders and their 1SGs. Of note, it outlines the immediate action drill for a number of issues routinely faced by this command.

Commanders in this Training Command routinely face the spectrum of legal issues—from operational issues involving the Law of Armed Conflict to questions of Ethics, all while facing the routine challenges of the basics of Military Justice and its impact on good order and discipline. As commanders, you have a unique and powerful role in the military justice system. You have the authority to immediately and directly affect individual lives, Soldiers' families, and the morale and continued combat readiness of this command. It is your duty to ensure that in disposing of alleged misconduct committed by Soldiers within this command, you do so carefully, deliberately, and in strict compliance with applicable law and regulation.

Soldiers will rally behind and remain loyal to a thoughtful and fair commander. An unfair or unlawful approach to military justice will adversely impact the morale of the unit and compromise our war fighting effectiveness. Each Soldier deserves to have his case adjudicated based on the specific facts of his individual case. I expect each commander to make fair and individualized determinations for each case of misconduct.

This guide does not simply reproduce existing Army Regulations; it attempts to bring together the relevant guidance from dozens of regulations and other legal sources, as well as the practical implications of these rules in a single *Guide* so leaders can quickly tackle the most frequently encountered legal issues. Wherever possible, information is presented graphically for ease of reference. Where appropriate, the *Guide* also includes checklists.

The information in this *Guide* is just that—a guide. It is a *summary* of the applicable law, and the law is subject to change. This *Guide* is not a substitute for your individual, reasoned, judgment, nor is this *Guide* a substitute for direct, fact-specific legal advice. The 7th ATC Legal Center remains ready to provide you timely, accurate legal advice across the spectrum of legal issues—anytime, anywhere.

MARK P. HERTLING
Brigadier General, USA
Commanding

CRITICAL LEGAL POCS

ATCLC MAJ DARYL B. WITHERSPOON

Office	475-8436
Cell	0151-1212-8095
Home	09605-922-388

NCOIC SSG MICHAEL BRICKLEY

Office	475-7126
Cell	0160-9653-8651
Home	09644-680-043

Criminal Investigations Command (CID)	475-7339
--	----------

Military Police Station	475-8319
-------------------------	----------

7th ATC Office of the Staff Judge Advocate

Trial Defense Service	476-2191
-----------------------	----------

Legal Assistance	475-7114
------------------	----------

Tax Center	475-7777/6880
------------	---------------

Magistrate	476-2885
------------	----------

Questions?

CYA – Call Your Attorney!

TABLE OF CONTENTS

<u><i>Subject</i></u>	<u><i>Page Number</i></u>
2005	I
PREFACE	II
CRITICAL LEGAL POCS	III
MISCONDUCT: STARTING POINT FOR ANALYSIS.....	1
COMMANDER’S LEGAL ARSENAL	2
RIGHTS UNDER ARTICLE 31, UCMJ	3
SAMPLE DA FORM 3881	4
INSPECTIONS, SEARCHES, AND CONSENT SEARCHES – RULES FOR THE BIG 3.....	5
INSPECTIONS.....	5
PROBABLE CAUSE SEARCHES.....	6
CONSENT SEARCHES.....	6
HEALTH AND WELFARE INSPECTIONS.....	7
COUNSELING, REPRIMANDS AND GOMORS	10
RESTRICTING SOLDIERS’ PRIVILEGES.....	11
RESTRICTION AND WITHDRAWAL OF PASS PRIVILEGES EXPLAINED.....	11
CORRECTIVE TRAINING	12
CORRECTIVE TRAINING V. PUNISHMENT – KNOW THE DIFFERENCE!	12
ADMINISTRATIVE SEPARATIONS	14
TYPES OF CHAPTERS.....	14
SPECIFIC REQUIREMENTS BY CHAPTER TYPE.....	15
CHECKLIST – PROCESSING CHAPTERS	16
ARTICLE 15, UCMJ.....	17
ARTICLE 15 MAXIMUM PUNISHMENTS	17
CHECKLIST- PROCESSING ARTICLE 15S	18
ARTICLE 15S - MOST COMMON MISTAKES	19
ARTICLE 15 – SAMPLE & INSTRUCTIONS	20
SAMPLE PUNISHMENT WORKSHEET	21
FIELD GRADE ARTICLE 15.....	21
PUNISHMENT WORKSHEET	21
JUDICIAL PUNISHMENT	22
OFF-POST OFFENSES	23
AWOL SOLDIERS & DESERTERS.....	24
POSITIVE URINALYSIS.....	26
IMMEDIATE ACTION DRILL.....	26
ALLEGATIONS OF NON-SUPPORT	27
DOMESTIC VIOLENCE	29
IMMEDIATE ACTION DRILL.....	29
ETHICS & NON-TACTICAL VEHICLES	30
PRIVATE ORGANIZATIONS	31
UNIT / INFORMAL FUNDS	32
INVESTIGATIONS.....	33
PRE-DEPLOYMENT ISSUES.....	34
SURRENDER OF MILITARY PERSONNEL TO LAW ENFORCEMENT.....	35
DRIVING UNDER THE INFLUENCE – REPRIMAND POLICY.....	36
UNIT COMMANDER RESPONSIBILITIES FOR PRISONER CONFINEMENT AND RELEASE FROM CONFINEMENT	38
UNIT PREPARATION FOR COURTS-MARTIAL.....	45

**THIS PAGE INTENTIONALLY
BLANK**

MISCONDUCT: STARTING POINT FOR ANALYSIS

Use the mnemonic CAV-U when conducting your initial analysis of individual Soldier misconduct:

C Crime: Get the specific facts - who did what to whom, where, when, why and how?
Is it a serious crime?
Is it minor military misconduct that can be remedied through corrective training and/or punishment?

A Accused: Know the accused's service record and personal circumstances.
Stellar Soldier or chronic dirtbag? Soldier in the middle of a messy divorce?
Brand-new Soldier out of Green Platoon or a senior NCO?

V ictim(s): Impact on the victim and the victim's cooperation and expected testimony.
Is there a victim? Was someone actually injured or was just property damaged?
Is the victim willing to cooperate in the investigation and/or prosecution?

U nit: What is the effect of the crime on the unit's morale and good order and discipline?
What is the immediate effect, if any, on this unit's warfighting ability? Are there OPSEC concerns? Is this the first AWOL in the unit or the 5th this month? Do we have a negative trend that needs to be turned off? Does someone else now have to do two jobs—their own and this Soldier's?

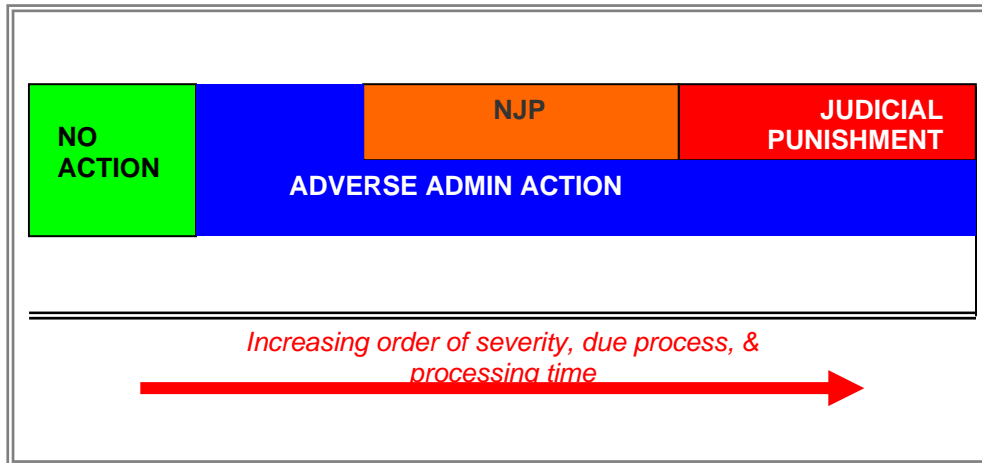
What is the desired end state for this Soldier / this case?

- Is it likely this Soldier can be rehabilitated?
- Do I want to keep this Soldier in:
 - The Army?
 - The Training Command?
- If the Soldier stays, does he need to be punished?
 - Should that punishment have permanent effects?
- If the Soldier needs to go:
 - What is more critical—speed or level of punishment / adverse action?
 - Does that Soldier just need to go away as quickly as possible, or does he need to be punished first?
- Do I have the authority to act in this case or is it withheld to a higher level?

COMMANDER'S LEGAL ARSENAL

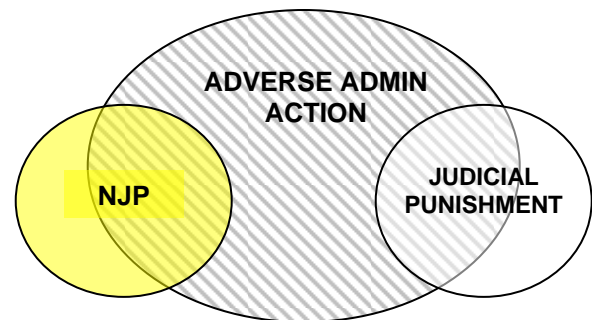
You've done your analysis, so what are your options? You always have **four (4) options**:

1. Do nothing (take no action),
2. Adverse administrative action (from a counseling statement to a "chapter"),
3. Non-judicial punishment (NJP) (e.g., Article 15), or
4. Judicial punishment (e.g., court-martial).



Adverse administrative actions and either NJP or judicial punishment are not mutually exclusive—one is often, although not always, accompanied by the other.

NJP and judicial punishment (courts-martial) are mutually exclusive—you generally can't court-martial a soldier if you already punished him under Article 15.



Basic rules for evaluation in choosing an option:

- Adverse administrative actions are technically non-punitive, although, practically, it may seem so.
- Adverse administrative actions are usually used to deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to directions, sloppy habits, immaturity, and similar deficiencies.
- Nonjudicial punishment is imposed to correct misconduct that is a violation of the UCMJ and usually the result of intentional disregard or failure to comply with prescribed standards of military conduct.
- Nonjudicial punishment and adverse actions involve taking away certain rights or entitlements, and the Constitution requires a corresponding amount of due process (Amendment V, "No person shall be . . . deprived of life, liberty, or property, without due process of law . . .").
- The more severe the punishment, generally the longer the process; more severe punishment involves higher levels of authority. More players = more processing time.
- An adverse administrative action may often accompany NJP (i.e., a chapter and an Article 15 for "popping hot"); one does not preclude the other.

“YOU HAVE THE RIGHT TO REMAIN SILENT...”

RIGHTS UNDER ARTICLE 31, UCMJ

General. If a commander (or **any** other service member) **suspects** a soldier of committing an offense under the UCMJ, **prior to questioning the Soldier**, he/she **must** advise the Soldier of the Soldier’s rights under Article 31. It is best to use DA Form 3881, Rights Warning Procedure/Waiver Certificate when advising a soldier. The form leaves a paper trail, whereas the Rights Warning Card DOES NOT. The instructions are on the reverse side of the form and give the command evidence of the Soldier’s waiver or invocation of those rights. Only if the form is not available, should you use a Rights Warning Card (*reproduced below*).

Issues

- ❑ As part of the advice of rights, the Soldier must be informed of **the nature of the offense** of which he is suspected. It is **not** necessary, however, to list the exact UCMJ punitive article for the alleged offense (in fact, DO NOT attempt to do this). The Soldier must merely know the “**nature**” of the offense.
- ❑ If a Soldier, AT ANY TIME, invokes the right to remain silent or requests a lawyer, **immediately stop the questioning.**
- ❑ The chain of command has an affirmative duty to ensure that no suspected Soldier is questioned prior to a rights advisement. A failure to do so is a failure to comply with Article 31, and is punishable under the UCMJ.

Practical Considerations. Commanders should consult with the ATCLC prior to giving a rights warning or questioning a suspected Soldier. Most crimes are best investigated by CID or the Military Police, and it may be best that the commander not question the Soldier. Even if the crime is one that the commander should investigate, the ATCLC can assist with the proper advisement and questioning.

HOW TO INFORM SUSPECT/ACCUSED PERSONS OF THEIR RIGHTS

Use this card only when DA Form 3881, Rights Warning Procedure/Waiver Certificate, cannot be used. Complete DA Form 3881 as soon as possible.

VERBAL RIGHTS WARNING

Inform the person of your official position, the nature of the offense(s), and the fact that he/she is a suspect/accused. Then read him/her the following—do not paraphrase; read verbatim:

“BEFORE I ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.”

1. “YOU DO NOT HAVE TO ANSWER MY QUESTIONS OR SAY ANYTHING.”
2. “ANYTHING YOU SAY OR DO CAN BE USED AS EVIDENCE AGAINST YOU IN A CRIMINAL TRIAL.”
3. (For personnel subject to the UCMJ) “YOU HAVE THE RIGHT TO TALK PRIVATELY TO A LAWYER BEFORE, DURING, AND AFTER QUESTIONING AND TO HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE A CIVILIAN YOU ARRANGE FOR AT NO EXPENSE TO THE GOVERNMENT OR A MILITARY LAWYER DETAILED FOR YOU AT NO EXPENSE TO YOU, OR BOTH.”
(For civilians not subject to the UCMJ) “YOU HAVE THE RIGHT TO TALK PRIVATELY TO A LAWYER BEFORE, DURING, AND AFTER QUESTIONING AND TO HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE ONE YOU ARRANGE FOR AT YOUR OWN EXPENSE, OR IF YOU CANNOT AFFORD A LAWYER AND WANT ONE, A LAWYER WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING BEGINS.”
4. “IF YOU ARE NOW WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION, WITH OR WITHOUT A LAWYER PRESENT, YOU HAVE A RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME, OR SPEAK PRIVATELY WITH A LAWYER BEFORE ANSWERING FURTHER, EVEN IF YOU SIGN A WAIVER CERTIFICATE.”

Make certain the suspect/accused fully understands his/her rights, then say:

“DO YOU WANT A LAWYER AT THIS TIME?”

“AT THIS TIME, ARE YOU WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION AND MAKE A STATEMENT WITHOUT TALKING TO A LAWYER AND WITHOUT HAVING A LAWYER PRESENT WITH YOU?”

(See DA Form 3881 for more detailed instructions.)
Department of the Army Graphic Training Aid
Supersedes GTA 19-6-5, July 1985

GTA 19-6-6, June 1991

**REMEMBER—THE
PREFERRED
METHOD IS TO USE
A DA FORM 3881.**

**THE RIGHTS
WARNING CARD
SHOULD ONLY BE
USED WHEN THE
DA 3881 IS NOT
AVAILABLE.**

**THE NEXT PAGE
CONTAINS A
COMPLETED
SAMPLE DA 3881**

SAMPLE DA FORM 3881

Remember—the instructions are printed on the back of the form, too!

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE			
DATA REQUIRED BY THE PRIVACY ACT			
AUTHORITY: Title 10, United States Code, Section 3012(g) PRINCIPAL PURPOSE: To provide a command and law enforcement officials with means by which information may be accurately identified. ROUTINE USES: Your Social Security Number is used as an additional alternate means of identification to facilitate filing an official record. DISCLOSURE: Disclosure of your Social Security Number is voluntary.			
1. LOCATION	2. DATE	3. TIME	4. FBI NO.
5. NAME (Last, First, MI)	6. OCCUPATION OF ADDRESS		
7. SSN	8. OFFENSE/STATUS		
PART I - RIGHTS WARNING/WAIVER CERTIFICATE			
Section A. Rights <p>The Investigator/Officer herein appears before said individual with the United States Army _____ and wishes to question you about the following offense(s) of which I am suspended/arrested: _____</p> <p>Before I ask you any questions about the offense(s) above, you must know that you have the following rights:</p> <ol style="list-style-type: none"> I do not have to answer any questions or say anything. Anything I say or do can be used as evidence against me in a criminal trial. If I am arrested under the DCMJ, I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at my expense or the Government or a military lawyer detailed for me at no expense to me, as I wish. If I am arrested and subject to the DCMJ, I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be a civilian lawyer I arrange for at my expense or a military lawyer detailed for me at no expense to me, as I wish. <p>If I am not willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, at which point I will be asked privately with a lawyer before answering further, even if I sign the waiver below.</p>			
9. COMMENTS (Number sentences used)			
Section B. Waiver <p>I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.</p>			
10. NAME (Type or Print) 11. OCCUPATION OF ADDRESS AND PHONE		12. SIGNATURE OF INTERVIEWER 13. SIGNATURE OF INVESTIGATOR	
14. NAME (Type or Print) 15. OCCUPATION OF ADDRESS AND PHONE		16. TYPED NAME OF INVESTIGATOR 17. OCCUPATION OF INVESTIGATOR	
Section C. Non-waiver <p>I do not wish to give up my rights.</p> <p><input type="checkbox"/> I wish a lawyer <input type="checkbox"/> I do not wish to be questioned or say anything</p>			
18. SIGNATURE OF INTERVIEWER			
ATTACH THIS WAIVER CERTIFICATE TO ANY WRITTEN STATEMENT (IF A FORM CASE) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			

Blocks 1-7 are self-explanatory; ignore block 4

Print your unit here (e.g., HHC, 7th ATC

Print offense of which individual is suspected; servicing Judge Advocate can provide you with this information

Have individual being questioned initial next to each bullet as you read it to them

Individual being interviewed signs here if they want to make a statement

Individual NOT WANTING to make a statement must check one or both of these blocks

Individual being interviewed signs here if they **DO NOT** want to make a statement

INSPECTIONS, SEARCHES, AND CONSENT SEARCHES – RULES FOR THE BIG 3

The Fourth Amendment balances individual rights to privacy against legitimate government interests such as military readiness. On one hand, the Fourth Amendment protects persons from unreasonable searches and requires probable cause for criminal searches; on the other hand, commanders have the power and responsibility to conduct inspections to ensure the readiness, fitness, and security of a unit or installation. The relationship between inspections and criminal searches is complex, so contact the ATCLC before you conduct such a search, or you risk that items discovered will be inadmissible for criminal prosecution (including Article 15s!). The specific facts of each case will dictate the result.

Summary: Consider the **target** (unit or person), **purpose** (readiness or criminal), and **standard**.

1. An inspection targets a unit, its purpose is military readiness, and the standard is to treat everyone the same. Only commanders can authorize an inspection. *Always include* “contraband” as one of the purposes for the inspection. You may not use an inspection as a guise for an illegal search (that is *subterfuge*).

2. A search targets a specific person and place, its purpose is to find evidence of a specific crime, and the standard is probable cause (specific facts – who, what, where, when - to make one believe that evidence is in a specific place). **Only commanders, military magistrates, or judges can authorize a probable cause search.** 1SGs, XOs, or platoon leaders may not authorize a probable cause search. Commanders must consult with the ATCLC before conducting a probable cause search.

3. A consent search can target anyone, its purpose is to find evidence of a crime, and the standard is voluntariness - so long as consent is freely given, and not coerced, the results are admissible. Anyone, officer, NCO, or military police, can obtain consent to search. Consent may be withdrawn at anytime and the search must immediately stop. *It is always best to have consent in writing before the search begins.* The Soldier should be informed of his rights under Article 31, UCMJ.

Inspections.

1. Inspections are a routine and vitally important part of military tradition and discipline. Commanders may order inspections (health and welfare, urinalysis, accountability, gate inspections) for any administrative purpose - to determine a unit’s readiness, fitness, security, and discipline, which includes confiscating contraband items (drugs and weapons). Inspections may cover all or selected portions of a unit. Commanders may inspect as often as they wish, provided there is a military purpose. There is no notice requirement. Dogs are permitted. Cars may be inspected.

2. Inspections Can Lead to Searches. If inspectors find contraband, such as drugs, during a barracks inspection, this may constitute probable cause for a commander to authorize a probable cause criminal search and order a urinalysis test for each Soldier assigned to that room. Consult with the ATCLC immediately if this situation arises.

3. Subterfuge Rule. When an inspection is directed immediately following the report of a specific offense involving drugs or weapons, or specific individuals are targeted for inspection, the commander must show by clear and convincing evidence that the primary purpose of the inspection was administrative and that the inspection was not a subterfuge for an illegal criminal search (for example, in a lost weapon lockdown, the primary purpose is to recover the weapon).

Probable Cause Searches.

1. Freeze the situation. If you encounter contraband (drugs or weapons) and are not sure what to do, freeze the situation and call your commander and trial counsel. Do not let anyone leave. Remove everyone from the important area (the room). Do not allow persons to talk among themselves, but keep them under observation. One person should hold or observe the contraband.

2. Commanders may order searches of a barracks room, vehicles, and persons under their control after they articulate that there is probable cause that the specific items sought are in the specific places to be searched. Consult with the ATCLC. If a commander is too involved with a case, use a military magistrate or higher commander to authorize the search. XOs and ISGs may not authorize searches. The term “search authorization” means the same as a civilian “search warrant.” The critical difference is that a warrant must be in writing and an authorization may be oral (i.e., given over the telephone).

3. What is probable cause? Probable cause consists of specific facts – who, what, where, when – provided by persons with personal knowledge, not rumors. For example, a statement by a Soldier, even a less-than-stellar Soldier, that “I saw marijuana in plastic bags in SPC Jones’ car last night” would provide probable cause to order a search of SPC Jones’ car today (but maybe not a week from today). A statement that “I saw SPC Smith smoking marijuana in his room two days ago” would likely constitute probable cause to order a urinalysis of SPC Smith and a search of his room. Always ask questions to corroborate the information. Specific places (where) and timeliness (how old is the information) are crucial in determining probable cause. Make a memo of the specific information provided to you.

Consent Searches.

1. Consent – the “great cure-all.” If the accused Soldier gives voluntary consent to a search, it does not matter if no probable cause existed or if an inspection was improper. All evidence is admissible if found in a consensual search. Always ask for consent before searching anyone. It cannot hurt; it is merely another legal ground to permit seizure of evidence.

2. Voluntariness. Consent must be voluntary, based upon all the facts and circumstances. A commander cannot browbeat a subordinate for consent, nor should a commander threaten that he can search a room or order a urinalysis even without consent as a method of coercing consent. Informing a suspect of their Article 31 rights is one indication that consent was voluntary, but is not necessary in every case. Written consent is better than oral consent. Anyone, officers, NCOs, or CID, may seek consent.

3. Consent can be withdrawn. A person may consent and then withdraw consent; if so, the searcher must cease. Freeze the situation. If you can develop and articulate probable cause, you may be able to secure a search authorization from the appropriate commander and then continue the search. Immediately consult with your trial counsel.

HEALTH AND WELFARE INSPECTIONS

A health and welfare inspection is an examination of the whole or part of a unit, organization, installation, training site, vessel, aircraft or vehicle, which is conducted as an incident of command. The primary purpose of the inspection must be to determine or ensure the security, military fitness, or good order and discipline within the unit. Orders to submit bodily fluids, such as urine, fit within the definition of an inspection.

Subterfuge Rule. An inspection may not be a subterfuge for a search. It cannot be primarily designed to obtain evidence for a criminal proceeding (including punishment under Article 15, UCMJ). Evidence obtained from such a search will likely be suppressed (and thus inadmissible, even at an Article 15) if:

1. An inspection is ordered immediately after a report of misconduct; or
2. Soldiers are subjected to substantially different intrusions during an inspection.

Evidence that an examination is a genuine inspection, and not a subterfuge, includes:

1. Documentation that the inspection was pre-planned;
2. The commander giving instructions on how to check common areas;
3. The commander defining what contraband is being sought, and
4. The commander emphasizing that all Soldiers will be inspected equally.

Commanders should coordinate with the ATCLC prior to directing health and welfare inspections, particularly in unusual circumstances.

Single Soldier Initiatives. Single Soldier initiatives do not affect the law concerning health and welfare inspections. The commander remains responsible at all times for the health, welfare, and safety of Soldiers. The commander retains the inherent authority and responsibility to conduct frequent and thorough inspections of Soldiers and the barracks. To maintain the integrity of the inspection, no one can know the inspection is coming.

Some tips on scheduling / using Military Working Dogs (MWD).

- ❑ Commanders can schedule MWDs by calling the Provost Marshall's Office (LTC Bondy) at 475-1380 or 475-8385. Commanders should specify the type of MWD (narcotic or explosive) and the date/time needed. The PMO will coordinate the request with the Kennel Master (SFC Mcenaney). (The Grafenwoehr MWD Kennels can be reached at 475-8309).
- ❑ Due to ongoing deployments and limited resources, the Kennel Master asks that Commanders requesting the use of MWDs submit the request at least two weeks in advance.
- ❑ Soldiers must be out of their rooms when the dogs come through. The best way to do this is to have a formation and move all the soldiers into a common area (i.e. the dayroom).
- ❑ The MPs will require an escort for the team going through the barracks with the dogs.
 - When a dog alerts in a room (on a wall locker, etc.) the ISG should bring the soldier up (comms during the inspection are key) and have him/her open whatever the dog has alerted on.
 - The Commander should NOT be the person escorting the soldier; he needs to remain in a central location and "detached" enough from the mechanics of the search/inspection in order to render an unbiased order (authorize a search), if necessary.

UNLAWFUL COMMAND INFLUENCE (UCI)

BLUF: These rules ensure that military justice remains fair. Violations have severe consequences.

Article 37, UCMJ. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case...[Note: Article 98, UCMJ, makes this a punitive provision.]

Ten Commandments of UCI

- I:** If you want it done your way, do it yourself . . . the commander may not order a subordinate to dispose of a case in a certain way.
- II:** The commander must not have an inflexible policy on disposition or punishment (e.g., stating “If you commit misconduct X, you’ll receive punishment Y”)
- III:** The commander, if he or she is the accuser, may not dispose of the case.
- IV:** The commander may not select or remove court members in order to obtain a particular result in a particular case.
- V:** No outside pressures may be placed on the judge or court members to arrive at a particular decision.
- VI:** Witnesses may not be intimidated or even discouraged from testifying.
- VII:** The court decides punishment. An accused may not be punished before trial.
- VIII:** No person may invade the independent discretion of the military judge.
- IX:** The commander must have an open mind toward clemency.
- X:** If a mistake is made, raise the issue immediately.

COMMANDER'S LEGAL ARSENAL – ADVERSE ADMINISTRATIVE ACTION

This is the broadest category. It ranges from an oral reprimand (least severe) to an administrative separation (most severe). Adverse administrative actions are generally most appropriate for minor disciplinary infractions. Adverse administrative actions are technically non-punitive, although the practical effect may appear to be punitive. A non-exhaustive list of adverse administrative actions (and the governing regulation or field manual) includes:

1. Oral admonition * (FM 22- 100, ¶ 5-90)
2. Written counseling * (FM 22- 100, ¶ 5-90; AR 635-200, ¶1-16b; UR 635-200)
3. Letters of Reprimand / Admonition * (AR 600-37, ¶ 3-4)
4. General Officer Memorandum of Reprimand * (AR 600-37, ¶ 3-4)
5. Denial of privileges * (AR 600-20, Chap 4, general info; AR 600-8-10, pass privileges; AR 190-5, driving privileges; AER 190-1)
6. Corrective training * (AR 600-20, ¶ 4-6; AR 27-10, ¶ 3-3(c); UR 27-10)
7. Bar to reenlistment (AR 601-280, ¶ 6-4d)
8. Revocation of security clearance (AR 604-5) (*consult with unit S2*)
9. MOS reclassification (AR 600-200)
10. Flying Evaluation Board (AR 600-105, Chap. 6)
11. Rehabilitative transfer / reassignment from the unit (*consult with unit S1*)
12. Adverse OER/NCOER (ARs 623-205 & 623-105; UR 623-105)
13. Relief for cause (AR 600-20, ¶ 2-17)
14. Administrative separation (a “chapter”) * (AR 635-200)

The most frequently encountered of these actions (indicated by a *) are described in greater detail in the pages that follow.

COUNSELING, REPRIMANDS AND GOMORS

Oral reprimand. This is slightly more effective than doing nothing. If it's more than an on-the-spot correction, it is generally worth memorializing in writing as a written counseling.

Counseling. If you are going to counsel for misconduct or poor performance, always counsel in writing; to do otherwise is a waste. *Always document misconduct*. Ensure the counseling statement includes the “magic language” of AR 635-200, ¶ 1-16b. This is the critical “notice” aspect of due process. For some chapter actions (including patterns of misconduct, unsatisfactory performance, personality disorders, and failure to establish a family care plan—see AR 635-200, ¶ 1-16a), you must put the Soldier on notice and give them an opportunity to correct the deficiency prior to being able to separate them. Written counseling provides the documentation necessary should more severe action be required at a later date. Any written counseling with the “magic language” can start this process. This is the “magic language” that should appear at the bottom of Part III of the DA Form 4856 (Developmental Counseling Form):

“You are being counseled for the above indicated misconduct and/or unsatisfactory duty performance IAW AR 635-200, ¶1-16b. Continued behavior of this kind may result in initiation of separation action to eliminate you from the Army or nonjudicial or judicial punishment. Any further acts of misconduct or unsatisfactory performance may cause you to be eliminated without further counseling. If you are administratively separated from the Army, you could receive an Other Than Honorable (OTH) Conditions Discharge. An OTH discharge could deprive you of many or all military and Veterans Administration (VA) benefits including loss of both education benefits and civil service retirement credit. A negative characterization of your service can have lasting negative impacts on future employment.”

Letter of Reprimand / Admonition (LOR). There is no legal difference between the two. It doesn't matter what you call it; at anything below the General Officer (GO) level, they are nothing more than formal counseling statements. It takes a GO to file the letter in the Soldier's official file, including both the performance and restricted fiche. (AR 600-37, ¶ 3-4). A LOR at your level simply goes in the Soldier's SMIF (local/unit) file. Use a counseling statement for misconduct; use a LOR for things like substandard leadership ability, poor judgment, integrity issues, and/or inappropriate moral standards. Consult with the ATCLC prior to ever giving a LOR/LOA. A LOR must include the following language:

“This reprimand is imposed as an administrative measure in accordance with AR 600-37 and not as punishment under Article 15, UCMJ. I intend to file a copy of this memorandum in your local personnel files. You will acknowledge receipt of this memorandum by completing the attached endorsement and returning it to me within 5 working days of receipt. If you fail to timely submit matters for my consideration I will direct filing of this memorandum without your input.”

General Officer Memorandum of Reprimand (GOMOR). Unlike most reprimands from an O6 or below, a GOMOR can be filed in the Soldier's OMPF. The Soldier must have an opportunity to respond, in writing, to the GOMOR. The Soldier may also request an appearance before the imposing GO; it does not need to be granted. Prior to filing the GOMOR, and after the Soldier has had the opportunity to submit written rebuttal matters (with the help of a legal assistance attorney), the chain of command must make written recommendations as to the filing determination. A GOMOR is automatic for DUI offenses for E5s and above; it is the only offense that *requires* a GOMOR by regulation. Additionally, IAW Army Regulation 190-5 paragraph 2-7 and paragraph 2-17(a) of UR 190-1, the 7th ATC has established policy and procedures for responding to soldiers involved in alcohol or drug intoxication driving incidents. These procedures are outlined further in this guide under the heading “DUI GOMOR Policy.”

RESTRICTING SOLDIERS' PRIVILEGES

Prior to withholding any privilege or imposing any restriction, leaders must consult with the ATCLC. Although both withdrawal of privileges and imposition of restriction limit a Soldier's freedom of movement, **very different legal standards govern them.**

Every Soldier must receive permission to leave post. Ordinarily, Soldiers are given a blanket pass privilege, which allows them to leave post when their duties do not require them to be on post. A withdrawal of pass privileges revokes this blanket pass and requires the Soldier to remain on post unless he receives specific permission to leave. A Soldier whose pass privileges have been withdrawn may go anywhere on post when he is not required by his duties to be somewhere. A restriction goes one step further. It limits a Soldier's movement to only certain places on post.

Restriction and Withdrawal of Pass Privileges Explained		
	Withdrawal of Pass Privileges	Restriction
Defined	<ul style="list-style-type: none"> When pass privileges (an authorized absence from post or place of duty) are withdrawn from a soldier for a <u>specified</u> time period. Soldier can go anywhere on post. 	<ul style="list-style-type: none"> The moral or physical restraint of a person imposed by an order directing the person to remain within specified limits. Can limit a Soldier to certain places on post (e.g. Unit area, mess hall, place of worship).
When it May Be Imposed	<ul style="list-style-type: none"> When used as a corrective training tool to correct poor duty performance, appearance, etc. When a Soldier demonstrates that they have not earned pass privileges. For operational necessity / security. When a Soldier is pending court-martial. 	<ul style="list-style-type: none"> As punishment under Art. 15, UCMJ. As punishment imposed by court-martial. When a Soldier is pending court-martial. It must be coordinated with the ATCLC
Special Considerations	<ul style="list-style-type: none"> Commanders must detail withdrawal of pass privileges in writing. Commanders must periodically review and assess the continued necessity. 	<ul style="list-style-type: none"> Restriction imposed on a Soldier pending court-martial must be required by the circumstances and cannot be used as pre-trial punishment. Commanders must contact their trial counsel prior to imposing restriction pending court-martial. Commanders must periodically review and assess the continued necessity.

CORRECTIVE TRAINING

One of the most effective but under-utilized non-punitive measures commanders may use when a Soldier commits an offense or has demonstrated sub-standard performance is Extra Training or Instruction, commonly referred to as corrective training. This may be in addition to or in lieu of UCMJ or adverse administrative action. However, corrective training is never punishment!

Corrective training must be directly related to the deficiency and must be oriented to improving the Soldier's performance in his problem area (AR 600-20, ¶ 4-6 and AR 27-10, ¶ 3-3(c)). Although corrective training may be accomplished after normal duty hours, the measures must be training or instructive in nature, not punishment. Corrective training should continue only until the training deficiency is overcome.

Soldiers undergoing administrative separation or facing NJP or court-martial may be required to conduct corrective training prior to their case being adjudicated or their separation approved. Commanders wishing to do so should always consult with the ATCLC to ensure the corrective training does not amount to unlawful pretrial punishment under Article 13, UCMJ. Soldiers found to have been punished prior to trial may, among other things, have an adjudged sentence reduced at trial.

Corrective Training v. Punishment – KNOW THE DIFFERENCE!		
	Corrective Training	Punishment
When Imposed	In an effort to correct a deficiency—substandard performance or minor misconduct.	Only <i>after</i> determination of guilt at NJP or court-martial.
Imposed by	Soldier's immediate commander	Commander adjudicating Article 15 or Military Judge.
Nature of Tasks	NEVER includes those tasks traditionally assigned as "extra duty" following an Article 15.	Includes those traditional "extra duty" tasks like picking up the trash, etc.
Relation to Offense	ALWAYS / MUST be related to underlying misconduct or substandard performance.	No requirement to be related to underlying misconduct; may be punishment simply for punishment's sake.
Duration	Continues until deficiency is corrected; requires constant assessment.	Continues for a predetermined number of days (e.g., "14 and 14"). It's done when the clock says it's done.
Stigmatizes or Humiliates?	Never.	Permissible.

Examples of **unlawful** corrective training (e.g., actions considered unlawful punishment):

(1) SPC Doe gets multiple speeding tickets on post. SPC Doe cannot be made to stand at the entrance to the compound at lunchtime wearing a large sign warning people against the hazards of speeding. Such actions publicly stigmatize or humiliate the Soldier (*and, for the historians, have been outlawed since the 1917 edition of the Manual for Courts Martial*).

(2) SPC Doe pops hot for cocaine. His “chapter” and his Article 15, both incomplete, are “sitting at JAG.” SPC Doe is required to conduct one-man, after hour, FOD checks of both the unit’s hangar and adjacent pads. This is improper. SPC Doe is being punished (the work is unrelated to popping hot for cocaine) despite the fact that he has not yet been found guilty at his pending Article 15 proceeding.

(3) SPC Doe fails to salute an officer outdoors. It is not proper to make SPC Doe clean the orderly room or pull police call outside the barracks.

Examples of **appropriate** corrective training include:

(1) SPC Doe continuously reports to formation late and/or in the incorrect uniform. Corrective training for SPC Doe may be to report to the CQ every hour in a different, but specified, uniform for a limited duration (e.g., 8 hours on a non-duty day). SPC Doe may also be required to report to his place of duty 30 minutes prior than everyone else for one week. In both instances, the corrective training is aimed at remedying the substandard behavior—reporting for formation on time and in the proper uniform.

(2) SPC Doe fails to maintain accountability of his weapon during an exercise. SPC Doe may be required to inventory a section’s equipment or assist in the monthly sensitive items inventory, even if it is not his routinely assigned extra duty.

(3) SPC Doe, who lives in the barracks but “stays” with his girlfriend off post, is chronically late to PT, always blaming traffic at the gate. It is proper to pull SPC Doe’s off post pass privileges.

(4) SPC Doe fails to obey the orders given to him by an NCO. SPC Doe may be required to write a two-page essay explaining NCO authority and military discipline.

(5) SPC Doe gets multiple speeding tickets on post. SPC Doe may be directed to give a class to Soldiers in his unit about installation driving rules, including speed limits.

ADMINISTRATIVE SEPARATIONS “CHAPTERS”

Administrative eliminations, or “chapters” as they are more commonly referred to, can be frustrating to commanders and 1SGs. They often seem to “take forever,” especially when the command has already made its decision to eliminate the soldier from the Army, not just the unit.

Understanding the process, outlined in the three-stage checklist (attached), and following these sequential steps will help speed up the process. The biggest hurdle is usually Part II of the soldier’s physical/medical evaluation—start that early and track it often!

Your unit legal clerk is your primary POC for the status of the chapter.

The following are the types of possible chapters. Those in bold (and in blue, if in color) are the most frequently encountered in the Training Command.

TYPES OF CHAPTERS		
CHAP	TITLE	NATURE
5-8	INVOLUNTARY SEPARATION DUE TO PARENTHOOD	INVOLUNTARY
5-11	SEPARATION OF PERSONNEL WHO DID NOT MEET PROCUREMENT MEDICAL FITNESS STANDARDS	INVOLUNTARY
5-12	DISCHARGE FOR FAILURE AFTER ENLISTMENT TO QUALIFY MEDICALLY FOR FLIGHT TRAINING	INVOLUNTARY
5-13	SEPARATION BECAUSE OF PERSONALITY DISORDER	INVOLUNTARY
5-14	CONCEALMENT OF ARREST RECORD	INVOLUNTARY
5-17	EARLY SEPARATION TO FURTHER EDUCATION	VOLUNTARY
6	SEPARATION BECAUSE OF DEPENDENCY OR HARDSHIP	VOLUNTARY
7	DEFECTIVE ENLISTMENTS, REENLISTMENTS, AND EXTENSIONS	INVOLUNTARY
8	SEPARATION OF ENLISTED WOMEN - PREGNANCY	VOLUNTARY
9	ALCOHOL OR OTHER DRUG ABUSE REHABILITATION FAILURE	INVOLUNTARY
10	DISCHARGE IN LIEU OF TRIAL BY COURTS-MARTIAL	VOLUNTARY
11	ENTRY LEVEL PERFORMANCE AND CONDUCT	INVOLUNTARY
12	RETIREMENT FOR LENGTH OF SERVICE	VOLUNTARY
13	SEPARATION FOR UNSATISFACTORY PERFORMANCE	INVOLUNTARY
14-12b	SEPARATION FOR PATTERN OF MISCONDUCT	INVOLUNTARY
14-12c	SEPARATION FOR COMMISSION OF A SERIOUS OFFENSE	INVOLUNTARY
15	DISCHARGE FOR HOMOSEXUAL CONDUCT	INVOLUNTARY
18	FAILURE TO MEET BODY FAT STANDARDS	INVOLUNTARY

ADMINISTRATIVE SEPARATIONS SPECIFIC REQUIREMENTS BY CHAPTER TYPE

The following are the requirements for administrative separations (those indicated with an arrow and, if in color, in yellow, are the most frequently encountered in the 7th ATC):

TYPE OF CHAPTER	REQUEST FOR CHAPTER	DA FORM 4187	COUNSELING & REHAB REQ IAW PARA 1-XX	DEBT AVOIDANCE COUNSELING	ACAP BRIEF / DD FORM 2648	ERB / DA FORM 2-1	PHYSICAL EVALUATION (PART I and II)	MENTAL EVALUATION	HONORABLE	GENERAL (UNDER HONORABLE)	OTHER THAN HONORABLE (OTH)	APPROVING AUTHORITY
5-8	X		X	X	X	X			X	X		Bde CDR
5-11	X			X	X	X			X	X		Bde CDR
5-12	X			X	X	X	X		X	X		Bde CDR
5-13	X		X	X	X	X		X	X	X		Bde CDR
5-14	X			X	X	X			X	X		Bde CDR
5-17	X		X	X	X	X	X	X	X	X		Bde CDR
6		X		X	X	X			X	X		Bde CDR
7	X			X	X	X	X		X	X	X	Bde CDR
8		X		X	X	X	X		X	X		BN CDR
9	X			X	X	X	X		X	X		BN CDR
10				X	X	X			X	X	X	CG, 1 st ID
11	X		X	X	X	X	X (1)					BN CDR
13	X		X	X	X	X	X	X	X	X		BN CDR
14-12b	X		X	X	X	X	X	X	X	X	X	Bde CDR
14-12c	X			X	X	X	X	X	X	X	X	Bde CDR
15	X			X	X	X	X		X	X		Bde CDR
18	X			X	X	X	X		X			BN CDR

Explanatory Notes

(1) Required for Chapter 11-3b only.

(2) SPCMCA is approval authority for General (Under Honorable Conditions). “Honorable” and “Other than Honorable (OTH) Conditions” discharges require CG, 1st ID approval.

ADMINISTRATIVE SEPARATIONS CHECKLIST – PROCESSING CHAPTERS

Most Soldiers are not eligible for an administrative separation board and are “chaptered” relatively quickly. Soldiers with more than 6 years time in service are automatically eligible for a board. If you recommend an “Other Than Honorable” (OTH) discharge, the Soldier is entitled to an administrative separation board, regardless of time in service. A board adds approximately 60-90 days to the total processing time; its recommendations must ultimately be approved by the CG, 7th ATC.

Once you’ve made the decision that you are going to administratively separate the Soldier (or, in the case of a hot urinalysis, are required to process the Soldier for elimination), the following is the sequential checklist / timeline of actions the unit is responsible for:

STAGE I – unit level actions:

- ☐ Notify ATLC of intent to chapter Soldier and underlying basis for chapter.
- ☐ Unit must flag Soldier (DA Form 268).
 - This is done through the unit PAC and is required for all involuntary separations.
- ☐ Ensure the Soldier completes Parts I and II of the physical (medical) evaluation.
 - This is done at the Grafenwoehr Health Clinic.
 - It is required for Chapters 5-3; 5-11; 5-12, 8; 9; 11; 12; 13; 14; 15 and 18.
- ☐ Ensure the Soldier completes a Mental Evaluation .
 - This is done with the Vilseck Mental Health Clinic.
 - It is required for Chapters 13; 14 and 15.
- ☐ *Command must complete the Debt Avoidance Memo with Soldier.
 - This is required for all involuntary separations and is provided by the ORJA.
- ☐ *Soldier must attend educational counseling.
 - This is required for all involuntary separations and covers VA educational benefits.

STAGE II – Unit must provide the ATCLC:

- ☐ Copy of Soldier’s ERB.
- ☐ Copy of the DA Form 268 (Flag).
- ☐ All relevant counseling statements, evidence of misconduct, etc. (originals).
- ☐ Parts I and II of the physical (medical) evaluation (originals).
- ☐ Debt avoidance memorandum signed by the commander (original).
- ☐ Education counseling memorandum (original)

STAGE III – ATCLC review and unit level actions:

- ☐ ATCLC reviews chapter action for legal sufficiency and provides unit Commander’s Notification Memo.
- ☐ Commander reads notification memo to Soldier, who signs the bottom of page 2 acknowledging receipt.
- ☐ *Commander sends Soldier to TDS (Rose Barracks, Vilseck) for separation counseling.
 - TDS’ phone number is 476-2190 The TDS NCOIC will schedule the appointment.
- ☐ Commander makes recommendation to battalion commander on form provided by ATCLC.
- ☐ Unit returns packet to ATLC
- ☐ ATCLC forwards packet to battalion commander for recommendation/action.
- ☐ If necessary, unit forwards packet to CO for recommendation/action.
- ☐ If necessary, unit forwards packet to CG, 1st ID for recommendation/action.
- ☐ *Soldier goes to transition point for orders separating him from the Army.
- ☐ *Soldier out processes / clears the unit, installation, and Army.

** Soldier must be accompanied by a NCO, senior in grade, at each of these steps.*

COMMANDER'S LEGAL ARSENAL – NON-JUDICIAL PUNISHMENT (NJP)

ARTICLE 15, UCMJ

Punishment under Article 15 may be an appropriate option if a Soldier has committed a “minor offense”—generally defined an offense for which a soldier could be punished at court-martial with no more than a bad conduct discharge. Article 15s are a function of the rank of the imposing authority, not the level of command. A Soldier punished by his company commander who is a CPT receives a “company grade Article 15.” If the company commander is a MAJ, it is a “field grade Article 15.” There are three types of Article 15s: (1) summarized, (2) company-grade, and (3) field-grade.

Summarized Article 15s. Summarized Article 15s give the Soldier a drastically reduced amount of due process. They are faster to administer, but are a smaller “hammer.” The maximum punishment is limited to 14 days extra duty, 14 days restriction, and/or an oral reprimand, or any combination thereof. No rank or pay may be taken. While the Soldier has the right to demand trial by court-martial rather than accept summarized proceedings, the Soldier has no right to an attorney when faced with a summarized Article 15. The Soldier may request, and the commander should grant, a reasonable time (24 hours) to contemplate whether or not to demand trial by court-martial.

Company and Field Grade (CG / FG) Article 15s. A step-by-step timeline/checklist is on the next page. CG and FG Article 15s are far more formal than summarized proceedings. The maximum punishment is greater (see chart below), but so is the corresponding amount of due process the Soldier is entitled to. Soldiers are entitled to meet with Trial Defense Services (TDS)(the Army’s criminal defense attorneys at 476-2190; at a minimum, the Soldiers must attend a TDS briefing and sign a waiver if they don’t want to talk to a defense attorney. Every Soldier has the right to demand trial by court-martial rather than accept nonjudicial proceedings; if this happens, immediately notify the ATCLC. Proceedings break down into two stages—notification (the initial “reading” of the Article 15) and adjudication (determination of guilt or innocence and imposition of punishment, if any).

Article 15 Maximum Punishments

Punishment	Imposed by Company Grade Officers	Imposed by Field Grade Officers
Admonition/Reprimand	YES	YES
Extra Duties*	14 days	45 days
Restriction*	14 days	60 days
Correctional Custody (E1 – E3)**	7 days	30 days
Reduction (E1 – E4)	One grade	One or more grades
Reduction (E5 – E6)	No	One grade***
Forfeiture	7 days pay	½ of 1 month’s pay x 2 months

(see AR 27-10, table 3-1, page 21, for more detailed information)

*When extra duty and restriction are combined, the total for both may not exceed the total number of days of extra duty. That is, they run concurrently up to the cap on extra duty; they do not run consecutively.

** Not available to 7th ATC.

***Only a field grade officer in command of a unit authorized an O5 commander or higher may reduce an E5 or E6. Thus, an acting battalion commander, on assumption of command orders, even if an O4, may reduce an E5 or E6.

CHECKLIST- PROCESSING ARTICLE 15s

- ❑ Soldier commits the offense(s).
- ❑ Chain of command becomes aware of offense(s) (hopefully in close order to its commission)

More than one offense can be included in a single Article 15. In fact, all known offenses must be handled together. Commanders can not give multiple, simultaneous Article 15s in order to increase the severity of the punishment.
- ❑ Chain of command conducts preliminary inquiry (Rules for Courts-Martial 303) and counsels and/or questions Soldier, if appropriate, *remembering the rules about reading the Soldier his rights!* (see page 3).

If the unit is also going to initiate “chapter” paperwork, this should be included in the counseling (always using the “magic language”) (see page 9). The unit should have the soldier immediately begin his medical and mental evaluations.
- ❑ Chain of command notifies ATCLC and provides: (1) Soldier’s ERB and (2) evidence of offense.

Evidence may consist of: results from **hot urinalysis** (at a minimum, the ADCO’s memo notify the commander, DD Form 2624-Specimen Custody Document (front and back)); **counseling statement** (e.g., for a FTR, garden variety disrespect, etc.); **DA 4187s** (for AWOLs), etc.
- ❑ ATCLC prepares Article 15 and returns original packet to unit. Packet will contain:
 - (1) Punishment worksheet on left side of folder;
 - (2) DA Form 2627, *Record of Proceedings Under Article 15, UCMJ*;
 - (3) Supporting evidence (ATCLC may add evidence, such as a CID report, etc.); (4) Soldier’s ERB;
 - (4) Trial Defense Service (TDS) information sheet;
 - (5) Suggested Guide for the Conduct of Nonjudicial Punishment Proceedings;
- ❑ Commander completes Part I (initial reading) [**SAMPLE FOLLOWS NEXT PAGE**].

The commander must sign Part I. The initial reading, however, can be done by the commander, the 1SG, or his designee. Whoever does the initial reading must annotate on the DA Form 2627, the date and time they conducted the initial reading. *The Soldier must be informed of his rights and advised that any statement he makes may be used against him in the subsequent proceedings.*
- ❑ Soldier is escorted by a NCO to TDS.

TDS, the Army’s criminal defense attorneys, is a stovepipe organization; they do not work for anyone at 7th ATC or 1 ID. TDS reports directly to DA. This protects the Soldier and his attorney. TDS is located on Rose Barracks, Vilseck in building 221. Appointments are required.
- ❑ Commander completes Part II (adjudication). **See Common Mistakes (next page).**

Soldier is permitted to:

 - (1) Call witnesses on his behalf;
 - (2) Present evidence—no formal rules apply;
 - (3) Have a spokesman (but no right to have an attorney present) to speak on his behalf;
 - (4) Request an open or closed hearing—ultimate call is the imposing commander’s;

Commander make determination of guilt or innocence using the beyond a reasonable doubt standard and, if necessary, completes punishment worksheet (left side of packet). Do not write punishment on the DA Form 2627.
- ❑ Unit returns original packet to ATCLC. ATCLC types in punishment and processes with PAC.

For nonjudicial punishment, any reduction in rank takes effect immediately. While **it is unlawful to perform a public “demotion ceremony,”** the unit may, once any appeals are completed, post a copy of the completed DA Form 2627 (with SSN redacted) on unit bulletin boards and/or announce offense and punishment at formation, etc., in order to achieve deterrent effect.

ARTICLE 15S - MOST COMMON MISTAKES

Background.

Legalese. Unit attempts to define the specific UCMJ offense (Article number, etc.,) on the initial counseling. This is not required and may serve to only confuse the issues. Always use plain English on counseling statements; we will handle the terms of the specification (the “legal piece”).

Part I.

Commander signs, but he or his designee fails to annotate the time and date when the Article 15 was *actually read to the Soldier*.

Part II.

Burden of Proof. The standard is beyond a reasonable doubt. This standard is not uniform across the services; the Army has the highest standard. Beyond a reasonable doubt is the same standard that a criminal jury must find before convicting an accused.

Witnesses. The commander denies the Soldier the witnesses because it’s inconvenient. The standard is “extraordinary circumstances.” That means the witness is deployed and can’t be reached telephonically, etc., not simply the fact that there has to be a minor scheduling change to accommodate a witness’ presence.

Filing determination. For NCOs, commanders fail to make a filing determination on line 5 of the DA Form 2627. For junior enlisted Soldiers, there is no OMPF filing; all Article 15s are filed locally. For NCOs, there is NO local filing option; the commander must decide between the performance fiche and the restricted fiche and check and initial the corresponding block. Note that if a NCO already has an Article 15 in the restricted portion of his fiche, a subsequent Article 15 will automatically be filed in the performance section.

**COMPLETED
SAMPLE ARTICLE 15
FOLLOWS**

ARTICLE 15 – SAMPLE & INSTRUCTIONS

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ			
For use of this form, see AR 27-10; the proponent agency is TJAG.			
See Notes on Reverse Before Completing Form			
NAME SCALIA, Antonin	GRADE SPC	SSN 123-45-6789	UNIT HHC, 1-160 th SOAR (A) Fort Campbell, KY 42223
		PAY (Basic & Sea/Foreign) \$ 1,665.30	
<p>1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: ^{1/} In that you, did, at or near Fort Campbell, Kentucky, on or about 1 January 2005, wrongfully use marijuana. This is in violation of Article 112a, UCMJ.</p>			
<p>2. You are not required to make any statements, but if you do, they may be used against you in this proceeding or at a trial by court-martial. You have several rights under this Article 15 proceeding. First I want you to understand that I have not yet made a decision whether or not you will be punished. I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense(s). You may ordinarily have an open hearing before me. You may request a person to speak on your behalf. You may present witnesses or other evidence to show why you shouldn't be punished at all (matters of defense) or why punishment should be very light (matters of extenuation and mitigation). I will consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. ^{2/} If you do not want me to dispose of this report of misconduct under Article 15, you have the right to demand trial by court-martial instead. ^{3/} In deciding what you want to do you have the right to consult with legal counsel located at TDS, 298-4417/0769, Forrest Road, FTCKY. You now have 48 hours to decide what you want to do. ^{4/}</p>			
DATE TIME	NAME, GRADE, AND ORGANIZATION OF COMMANDER IAM D. COMMANDER, LTC, 1-160 th SOAR (A)		SIGNATURE
<p>3. Having been afforded the opportunity to consult with counsel, my decision are as follows: (Initial appropriate blocks, date, and sign)</p> <p>a. <input type="checkbox"/> I demand trial by court-martial.</p> <p>b. <input type="checkbox"/> I do not demand trial by court-martial and in the Article 15 proceedings:</p> <p>(1) I request the hearing be <input type="checkbox"/> Open <input type="checkbox"/> Closed. (2) A person to speak in my behalf <input type="checkbox"/> Is <input type="checkbox"/> Is not requested.</p> <p>(3) Matters in defense, mitigation, and/or extenuation: <input type="checkbox"/> Are not presented <input type="checkbox"/> Will be presented in person <input type="checkbox"/> Are attached.</p>			
DATE	NAME AND GRADE OF SERVICE MEMBER ANTONIN SCALIA, SPC		SIGNATURE
<p>4. In a(n) <input type="checkbox"/> Open <input type="checkbox"/> Closed hearing ^{5/} all matters presented in defense, mitigation, and/or extenuation, having been considered, the following punishment is imposed: ^{6/}</p> <p style="text-align: center;">Leave section blank; complete punishment worksheet. ATCLC will type in</p>			
<p>5. Direct the original DA Form 2627 be filed in the <input type="checkbox"/> Performance niche <input type="checkbox"/> Restricted niche of the OMPT. ^{7/} N/A</p>			
<p>6. You are advised of your right to appeal to the Cdr, 160th SOAR (A) within 5 calendar days. An appeal made after that time may be rejected as untimely. Punishment is effective immediately unless otherwise stated above.</p>			
DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER IAM D. COMMANDER, LTC, 1-160 th SOAR (A)		SIGNATURE
<p>7. (Initial appropriate block, date, and sign)</p> <p>a. <input type="checkbox"/> I do not appeal. b. <input type="checkbox"/> I appeal and do not submit additional matters ^{8/9/} c. <input type="checkbox"/> I appeal and submit additional matters ^{8/9/}</p>			
DATE	NAME AND GRADE OF SERVICE MEMBER ANTONIN SCALIA,		SIGNATURE
<p>8. I have considered the appeal and it is my opinion that:</p> <p style="text-align: center;">Soldier elects OPEN or CLOSED hearing</p>			
		GRADE OF JUDGE ADVOCATE	SIGNATURE
<p>9. After consideration of all matters presented in appeal, the appeal is:</p> <p><input type="checkbox"/> Denied <input type="checkbox"/> Granted as follows: ^{10/}</p>			
DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER		SIGNATURE
10. I have seen the action taken on my appeal.		DATE	SIGNATURE OF SERVICE MEMBER
11. ALLIED DOCUMENTS AND/OR COMMENTS ^{11/ 12/ 13/} /M			

DA FORM 2627, AUG 84 (EG)

EDITION OF NOV 82 IS OBSOLETE

ORIGINAL

Appeal? If Soldier elects to appeal (and he only has one shot), he appeals to the next senior commander. The Soldier has 5 days (unless the commander gives him more time) to elect to appeal and, if he decides to do so, to submit additional matters for the next higher commander's consideration. All matters should be given to the ATCLC. We will provide them to the Appeal Authority. If the Soldier elects not to appeal, he simply checks the block, signs, and the chain of command returns the packet to the ATCLC.

Article 15 for a NCO? Imposing commander **MUST** make a filing determination—either Performance Fiche or Restricted Fiche. Local filing is NOT an option for NCOs punished under Art 15, UCMJ.

SAMPLE PUNISHMENT WORKSHEET

The appropriate version of this form, based on the Soldier's rank and the current pay scales, will be included in the Article 15 packet.

FIELD GRADE ARTICLE 15 PUNISHMENT WORKSHEET

1. Check the blank preceding the punishment imposed. Return entire folder to the ATCLC, who will type in the punishment and distribute copies as required. DO NOT WRITE IN BLOCK 4 of the DA Form 2627.

A. Reduction: (E4 and below one or more grades)

- ☐ No Reduction.
☐ Reduction to _____.
☐ Reduction to _____, suspended until _____ (date). *

B. Forfeiture: (Maximum is half-month's base pay per month for 2 months E4: \$907.00; E3: \$792.00; E2: \$668.00; E1: \$596.00) (NOTE: Amount of forfeiture is computed at reduced pay grade)

- ☐ No Forfeiture.
☐ Forfeiture of \$ _____, for ____ month(s).
☐ Forfeiture of \$ _____, for ____ month(s), suspended until _____ (date). *

C. Extra Duty: (Maximum is 45 uninterrupted days) **

(NOTE: NCOs can only perform extra duty in the capacity of a supervisor position.)

- ☐ No Extra Duty.
☐ Extra Duty for _____ days.
☐ Extra Duty for _____ days, suspended until _____ (date). *

D. Restriction: (Maximum is 60 uninterrupted days,) **

(NOTE: Restriction cannot exceed the amount of days of Extra Duty days when given in conjunction)

- ☐ No Restriction.
☐ Restriction for _____ days to the limits of places of duty, worship, dining & medical facilities.
☐ Restriction for _____ days, suspended until _____ (date). *

E. Reprimand: (NOTE: If written, it must be attached to original packet)

- ☐ Oral reprimand. ☐ Written reprimand.

F. Filing Determination:

- ☐ Local (E-4 & below)

* If any portion of the punishment is suspended, the following applies: Suspension of punishment may not be for a period longer than 6 months (180 days) from the date of imposition. AR 27-10, para 3-24 .

COMMANDER'S LEGAL ARSENAL

JUDICIAL PUNISHMENT

Background. Judicial punishment (a court-martial) is the most severe form of punishment and the last option a commander should consider. There are three types of courts-martial (c-m):

1. Summary Court-Martial
2. Special Court-Martial
3. General Court-Martial

While company commanders do not have the power to convene courts-martial, they may recommend trial by Courts-Martial. Commanders should only do so after talking to the ATCLC.

Summary Courts-Martial (SCM). This is the lowest level of courts-martial designed to dispose of relatively minor offenses (short AWOLs, etc.). A field grade officer sits as both judge and jury. It is a formal proceeding, done at the battalion level. No Military Judge, lawyers, or court reporters are present. Like an Article 15, the accused has no right to have an attorney present (although he does have a right to consult with one prior); the accused may have a spokesman. The **maximum punishment** includes:

- 30 days confinement, or
- 45 days of hard labor without confinement, and
- 60 days restriction,
- Forfeiture of 2/3s pay for one month, and
- Reduction to the lowest enlisted grade (for E4 and below).

NCOs tried by SCM may only be reduced one grade and may not be sentenced to confinement or hard labor without confinement; all other punishments apply. A SCM is not empowered to “kick” a Soldier out of the Army; separation will require a separate administrative separation action (“chapter”). Only enlisted Soldiers may be tried by SCM and the Soldier has the right to refuse trial by SCM and demand trial by a higher-level c-m.

Special Courts-Martial (SPCM). Unlike a SCM, a SPCM may proceed over the objections of the accused; the accused may NOT refuse trial by special court-martial. The accused is entitled to have TDS attorney present at all stages of the proceedings. He may also hire a civilian attorney at his own expense. The maximum punishment may include reduction to the lowest enlisted grade (for all ranks), up to one year confinement, and a punitive discharge (“Bad Conduct Discharge”). The commander must first *prefer* charges against the Soldier. The chain of command must then make written recommendations as to the disposition of the preferred charges. Ultimately, the Commander 100th ASG or Commander Operations Group must *refer* the charges to a court-martial. The process then often includes preliminary hearings (“motions”) before the Military Judge, and ultimately, the trial itself. Trial may be by a “judge alone” before a Military Judge (MJ) or before a panel (the “members” or the military’s equivalent to a “jury”). In either case, a MJ will preside over the hearings. Since the potential penalties are significant, the amount of due process, and thus the processing time, is correspondingly great.

General Courts-Martial (GCM). The highest level of c-m, it is withheld for the most serious crimes. Maximum punishment in some cases includes death. A GCM is a long, involved process. Charges must first be *preferred* by the commander against the Soldier. The preferred charges must then have the written recommendations of the entire chain of command, be vetted through an Article 32 investigation, and ultimately be *referred* to a court-martial by the Commanding General, 1st ID. The process often includes preliminary hearings (“motions”) before the Military Judge, and ultimately, the trial itself. Trial may be by a “judge alone” before a Military Judge (MJ) or before a panel (the “members” or the military’s equivalent to a “jury”). In either case, a MJ will preside over the hearings. Since the potential

penalties are significant, the amount of due process, and thus the processing time, is correspondingly great.

OFF-POST OFFENSES

DA Policy prohibits punishing a soldier (NJP or courts-martial) for an offense for which he has already been punished by civilian authorities. This policy does not prohibit simultaneous adverse administrative action—remember, adverse administrative actions are not punitive. You can (*and often will, when appropriate*) “chapter” a soldier based on an offense for which you were not able to punish the soldier (e.g., off-post felony assault or some other security-clearance-ending offense).

Without getting into a long, legal discourse, this policy is NOT based on the concept of “double jeopardy” barred by the Constitution (Amend. V),--it is a DA *policy* decision, thus the existence of the possibility of an exception granted only by the General Court Martial Convening Authority (GCMCA)

Off-Post DUIs:

- ❑ The most frequently encountered off-post offense.
- ❑ Allow civilian criminal case to move forward.
- ❑ If the Soldier is an NCO, the Soldier will automatically receive a GOMOR.
- ❑ Depending on the severity of the incident (simple DUI or accident involving injuries/personal damage), further investigation may be necessary. Consult with the ATCLC to make this determination.

Other Off-Post Offenses.

- ❑ **General rules.**
 - Never post bond for a Soldier under your command.
 - Never encourage/allow Soldiers in your unit to “raise money” to post bond for a Soldier under your command.
 - Always notify the ATCLC when you become aware of the fact that a Soldier is in civilian confinement.
 - Do not treat a Soldier in civilian confinement as AWOL (see pages 21-22).
 - Do not leave a soldier in civilian confinement simply because it is “easier for the unit.”
- ❑ If the soldier is arrested, once he is released, whether directly back to the unit or on their own recognizance, Commanders should discuss options with the ATCLC for placing restrictions on the Soldier’s liberty. These should be conveyed to the Soldier in writing and may include:
 - Pulling pass privileges
 - Moving a Soldier who lives off-post back into the barracks.
 - Creating requirements to check in regularly with the CQ/SDO.
- ❑ **Domestic Violence.** While commanders may not have NJP or judicial jurisdiction over these cases, they do have specific obligations outlined on page 26.

AWOL SOLDIERS & DESERTERS

AWOL. If you suspect a Soldier assigned to your unit to be absent without leave (AWOL) take the following steps (IAW ¶ 2-2, AR 630-10):

- ❑ Report the Soldier absent through PAC/chain of command.
- ❑ Conduct an immediate inquiry to determine the Soldier's location and possible reasons for the Soldier's absence.
- ❑ Notify the Military Police within 24 hours of the Soldier's absence.
- ❑ Record the results of the inquiry on a DA Form 4187.
This is the critical piece of the paper trail that will be necessary for prosecuting the Soldier, administratively eliminating him, or punishing him UP Article 15, UCMJ.
- ❑ Notify the Next of Kin (NOK).
This is done by mail (letter) (sample in AR 630-10, figure 2-1) mailed on the 10th day of AWOL **or** when the Soldier has sought political asylum or is voluntarily residing in a foreign country.
- ❑ Determine if the Soldier is married.
If the NOK is a spouse and the Soldier is an E-1 through E-4 with less than 4 years of service, the spouse is entitled to request BAH (for up to two months) if:
 1. The spouse is not living in government housing,
 2. The spouse is living in the AWOL soldier's residence, **and**
 3. There is no evidence that the spouse is currently residing with or has joined the absentee.(AR 630-10, figures 2-1 and 2-3 provide contains more information and a sample BAH request letter for the spouse.)

Desertion. The unit commander classifies the AWOL Soldier as a dropped from rolls (DFR) when one or more of the following apply:

- ❑ The Soldier has been AWOL for 30 days.
- ❑ The facts and circumstances of the absence, **without regard to the length of the absence**, indicate that the Soldier may have committed the offense of desertion as defined under Article 85, UCMJ. **Commanders must coordinate with the ATCLC prior to making this determination.**
- ❑ The Soldier has, without authority, gone to and remains in a foreign country, and while in the foreign country has requested, applied for, or accepted any type of asylum or resident permit from the country, or any governmental agency.
- ❑ The Soldier returns to military control and goes AWOL again, **without regard to the length of either of the absences**, before any administrative or judicial action for a previous absence.
- ❑ The Soldier escapes from confinement.
- ❑ The Soldier is a special category absentee (**this applies to soldiers who have had access to top secret information during the 12 months preceding the absence**).

Desertion (continued).

When the Soldier is a deserter, commanders must:

- ☐ Complete a DA Form 4187, reporting the Soldier's change of duty status from AWOL to DFR.
- ☐ Complete DD Form 553. The suspected reasons for the absence and information on pending investigations, Article 15, or UCMJ action at the time of the Soldier's absence are recorded in item 19.
- ☐ Send the completed DD Form 553 to the MPs. The MPs will add information to the DD 553 (other criminal charges that the soldier is facing), retain a copy of it, and then return the updated original to the unit.
- ☐ File court-martial charges on DD 458. File the charges for desertion in addition to any charges for other offenses, as appropriate. The ATCLC will draft the DD 458.
- ☐ Within 48 hours of the Soldier becoming a deserter, forward the original copy of the deserter packet through the Personnel Service Center (PSC) to the Commander, USAEREC, ATTN: PCRE-RD.

The AWOL Soldier will not be classified as a deserter when:

- ☐ The Soldier is under military control,
- ☐ The Soldier is confined by civilian authorities, however the soldier may be a Dropped from the Rolls (DFR) on SIDPERs if confined for 6 months or longer,
- ☐ The Soldier is receiving treatment in a civilian hospital, or
- ☐ The Soldier dies before the desertion report is made.

Reporting. Once the deserter packet arrives at the USAEREC, the United States Army Deserter Information Point (USADIP) verifies the information on the DD 553 with permanent records at the USAEREC and then enters the soldier's name into the National Crime Information Center (NCIC). The USADIP also forwards a copy of the DD 553 to all Federal, State, and local law enforcement officials who may be involved in the apprehension process. They also forward a copy to the PMO nearest the deserter's home of record, and forward a copy to the United States Army Crime Records Center (USACRC). At this point, with the name entered into the NCIC, there is a federal warrant for the arrest of the deserter that appears whenever any law enforcement officer attempt to access the deserter's information on the NCIC.

Apprehension.

- ☐ Commanders and NCOs **are** authorized to apprehend AWOL Soldiers off post if the Soldier is in a public place. They may NOT apprehend the Soldier in a private place (including his home or another's home) off post without a warrant and without the coordination and presence of local police authorities.
- ☐ Once the Soldier is apprehended, whether by civilian or military law enforcement, every effort must be made by military law enforcement officials to have the Soldier returned to the unit for judicial, nonjudicial, or adverse administrative action.

POSITIVE URINALYSIS WHAT TO DO WHEN A SOLDIER COMES UP “HOT”

Overview: Upon receiving a report of a positive urinalysis, get Soldiers to CID ASAP. Do not immediately call the Soldier in and counsel him. Although appropriate, this action often hinders other law enforcement investigation. It is best to wait and counsel the Soldier after CID has questioned him.

Immediate Action Drill

- ❑ **Immediately call CID** to set up an interview for the Soldier.
Both CID POC (Chief, Drug Suppression Team) and CID OIC are at 475-7164.
Commanders should not tell anyone, including the Soldier, about the result prior to the Soldier meeting with CID. The interview is much more effective if CID is the first to inform the Soldier they came up “hot.”
- ❑ **Flag the Soldier** pending investigation and disposition. See AR 600-8-2, ¶ 1-11.
- ❑ **Counsel the Soldier after** the Soldier speaks with CID.
Ensure the counseling includes the “magic language” of AR 635-200, ¶ 1-16b. (See page 9). Also note the requirement *to read the Soldier his rights prior to any questioning* that may occur as part of the counseling! (See page 3)
- ❑ **Order the Soldier to ASAP** as soon as possible for evaluation and treatment.
See AR 600-85. Be sure to complete DA Form 2496 and indicate that the referral is commander-directed. Do not allow a “self-referral” at this stage. Remember your requirement to continue to test the Soldier while he’s enrolled in ASAP (using code RO for the urinalysis). [ASAP phone number is 475-1710 or 7207(Grafenwoehr) and 476-2690 (Vilseck)]
- ❑ **Call the ATCLC** about disposition options, particularly for NCOs and above.
Remember, the withholding of authority to the battalion/O5 commander level).

Further Possible Actions: Remember to apply CAV-U before taking any of the following steps.

- ❑ Revocation of the Soldier’s security clearance.
- ❑ Counseling (in addition to ASAP) with the Mental Health Clinic or the Chaplain if the command feels there are issues that may have contributed to the soldier’s substance abuse.
- ❑ “Chapter” action (administrative separation).
UP AR 635-200, Chapter 14, para. 14-12c, for commission of a serious offense. Using a controlled substance is a serious offense. You **must** process every Soldier that comes up positive, regardless of rank or time in service, for separation. You may recommend separation or retention as you deem appropriate, but the action must be routed through to the approval authority.
- ❑ Field Grade Article 15.
For a violation of Article 112a, UCMJ, wrongfully using a controlled substance. Due to the CO’s withholding policy and the non-delegation of that authority, a company grade Article 15 will never be an option for a positive urinalysis.
- ❑ Court-martial.
This meets the requirements of AR 600-85 and 635-200 for processing a Soldier for elimination.

ALLEGATIONS OF NON-SUPPORT

Background Facts. Once notified of allegations of nonsupport by a Soldier under their command, commanders have specific regulatory responsibilities, outlined in Chapter 3 of AR 608-99, *Family Support, Child Custody, and Paternity*. This includes telephonic complaints by ex- or estranged spouses! The IG investigates failures by commanders to act; those failures can have a permanent negative impact on a commander's career.

Commanders must:

- a. Inform the Soldier. The commander must inform the Soldier about the nature of the inquiry or allegation; he should do so in writing (using DA Form 4856). The commander should advise the Soldier of his or her rights (using DA Form 3881) before questioning the Soldier, as a violation of the financial support and child custody provisions of the regulation can result in charges under Article 92, UCMJ.
- b. Gather relevant information. This is necessary to determine whether the Soldier has violated AR 608-99 or other applicable laws (*see* AR 608-99, ¶ 3-4). Remember—if the commander determines that the Soldier has failed to comply in the past or indicates any unwillingness to comply in the future, the commander **MUST** order compliance (¶ 3-6b(3)(a)).
- c. Counsel the Soldier. The commander must counsel the Soldier (¶ 3-3). This cannot be delegated; it must be the commander. Commanders must include the “magic language.” The counseling statement (which will likely include an order specifying the methods by which to comply with the support requirements) may form the basis for adverse administrative or UCMJ action if the Soldier fails to follow the commander's order.
- d. Respond to the Complaining Party. Within 14 days of receiving the inquiry or allegation of nonsupport, the commander must respond to those making the inquiry or allegations (family members or agencies representing family members) in writing, and the reply must include the following information (*see* AR 608-99, ¶¶ 3-5, 3-6, and 3-9):
 - ❑ The name, rank, and organization of the commander who counseled the Soldier.
 - ❑ The commander's mailing address and telephone number.
 - ❑ Date(s) the Soldier was counseled.
 - ❑ A statement as to whether or not the Soldier has authorized the release outside the DOD of information obtained by the commander.
 - ❑ A statement as to whether or not the Soldier admits that he or she has a financial support obligation to the family member in question, and if not, why not.
 - ❑ A statement as to whether or not the Soldier admits that he or she failed to provide financial support as required by AR 608-99.

NOTE: If the Soldier admits that he or she failed to provide financial support, the commander will provide a complete summary of the reasons and the immediate steps that the Soldier will take to comply with AR 608-99 in the future.
 - ❑ A complete summary of the Soldier's recent actions to comply with AR 608-99. This includes: dates and amounts of personal checks or money orders sent; the date, amount, and payee address for a voluntary allotment; any other interim actions the Soldier will take to meet his or her financial support obligations until the first military allotment check is received.

e. Get the Soldier to the Legal Assistance. Commanders should ensure ANY Soldier who is the subject of a support inquiry is provided an opportunity to meet with a legal assistance attorney at the Grafenwoehr Law Center (phone number 475-7114 or commercial 09641-83-7114).

f. Order compliance. If the commander determines that the Soldier has failed to comply in the past or indicates any unwillingness to comply in the future, the commander must order the Soldier to comply with the provisions of AR 608-99 and can provide specific guidance on how to accomplish that. Commanders should consult with the SJA prior to making a decision about giving or not giving such an order. The order is then a lawful order, and a failure to comply can be punished under the UCMJ. (§§ 2-5 and 2-9 lay out the punitive aspects of the regulation regarding financial support and child custody)

Frequent Problem Areas.

a. Heirarchy of documents. Court orders trump the requirements of AR 608-99. If there is no court order, any written financial support agreement between the parties then controls. Absent both of those, the financial support provisions of AR 608-99, § 2-6 govern.

b. Releasing Soldiers from their obligations. Company commanders MAY NOT release Soldiers from their obligations under AR 608-99. Period. Pursuant to AR 608-99, § 2-11, battalion commanders, NOT company commanders, are authorized to release a Soldier from the requirements of AR 608-99 based on the specific situations enumerated in that paragraph.

Consequences for Commanders. Commanders should realize that if they do not make a good faith effort to follow through with their duties pursuant to AR 608-99, and the Inspector General makes a substantiated claim against them for failing to do so, this information will be recorded in the IG database, and could prevent commanders from being promoted or being selected to DA select positions like schools and command.

DOMESTIC VIOLENCE

Domestic violence requires timely intervention to ensure the safety of both family members and soldiers.

Immediate Action Drill.

- ❑ When learning of an allegation of spouse abuse, Commanders should immediately contact the ATCLC (24/7).
- ❑ Promptly report any allegation of spouse abuse to the MPs at 475-8319 (Desk Sergeant).
- ❑ Move the Soldier into the barracks, regardless of whether his home is on or off post.
- ❑ Determine whether the Soldier has any personally owned firearms. If so, secure them in the unit arms room ASAP.
- ❑ Commanders should issue Military No-Contact Orders (MNCOs).
 - Commanders may issue an interim / initial MNCO verbally.
 - The ATCLC will help the commander craft the specific language of the written order.
 - The written MNCO must, at a minimum, specify:
 - The duration of the order (*at an absolute minimum* it should be 72 hours).
 - The factors permitting lifting the order and the individual(s) authorized to do so.
 - The fact that the order is in effect until further notice from the commander.
 - A sample MNCO is contained in AR 608-18, fig. 3-3, pg. 32.
- ❑ Pull the Soldier's pass privileges (see page 10).
- ❑ Within 24 hours, the Commander must provide a copy of the MNCO to the individual with whom the Soldier is NOT to have contact.
- ❑ Copies of the MNCO must be forwarded to the MPs, SWS (Social Work Services @ 475-8520-Grafenwoehr, 476-2100- Vilseck), and the FAPM (Family Advocacy Program Manager, at 476-2650).
- ❑ Ensure the soldier is enrolled in Anger Management Counseling. Call Social Work Services (SWS) at 475-8520 (Grafenwoehr) or 476-2100 (Vilseck)..

Additional Guidance.

- ✓ ***Never*** interview the couple together without first consulting with the ATCLC.
- ✓ Remember there are additional resources for dealing with domestic issue—these include the Vilseck Mental Health Clinic (476-1750) and unit chaplains (475-6505). While they can augment the mandatory anger management counseling, the soldier must be enrolled with SWS, too.
- ✓ **In instances of child abuse, immediately contact the MPs and the ATCLC, regardless of the time of day at which you become aware of the allegations.**

Responding to Civilian Protective Orders.

When notified that a Soldier under your command has been issued a Civilian Protective Order (CPO), immediately contact the ATCLC for guidance. You must:

- ❑ Ensure the Soldier understands the order.
- ❑ Move the Soldier into the barracks.
- ❑ Withdraw the Soldier's pass privileges.
- ❑ Confine the Soldier to the unit area (unless escorted by an E6 or above).
- ❑ Ensure all of the Soldier's personal firearms are stored in the unit arms room.
- ❑ Additionally, you may issue a MNCO to reinforce the CPO.

ETHICS & NON-TACTICAL VEHICLES

The use of non-tactical vehicles (NTVs) is restricted to official purposes only (§ 2-3, AR 58-1, *Management, Acquisition, and Use of Motor Vehicles* (10 August 2004)). There is no *deminimis* or “incidental use” exception.

The following are prohibited uses of NTVs:

- NTVs will not be used for transportation to private social functions or for personal errands. This includes “side trips” taken from official travel (e.g., stopping at the Shoppette or Burger King on the way back from a distro run on main post). (AR 58-1, Para. 2-4e)
- NTVs will not be used for duty-to-domicile (e.g., home-to-work or work-to-home). (Para. 2-4d).
- NTVs will never be parked at on-post quarters or off-post homes. (Para. 2-2f)
- NTVs will never be used for transportation to or parked at commissaries, post exchanges (including all concessions), bowling alleys, or on-post clubs, unless personnel using the vehicles are on official Government travel (e.g., TDY). NTVs may not be used for commissary runs to restock unit refrigerators run as “Fridge Funds” or the like. (Para. 2-4c and e)

The following are permissible uses of NTVs:

- NTVs may be used for to transport to official ceremonies where the individual being transported will either be (1) the senior official present or (2) participating in the event. Additional soldiers may travel on a space available basis; taking a larger vehicle than normally used in order to accommodate more “space-A” passengers is not permitted. (Para. 2-3a)
- The spouse of a government employee may travel in a NTV only when accompanying the military member or the civilian employee in the NTV. The commander must authorize such use in advance. (Para. 2-3b). Specific questions should be directed to the Staff Judge Advocate.
- Transportation to local airports must originate and end at the individual’s place of duty; the individual may not be picked up or dropped off at his house. (Para. 2-3(i))
- NTVs may be used by individuals in a TDY status, but only between the individual’s place of lodging, place of business, eating establishments, drugstores, barbershops, places of worship, and similar places required for health and comfort. Specifically prohibited are commercial entertainment facilities, including movie theaters. (Para 2-3i)
- Transportation in a NTV to and from after duty hours official functions must begin and end at the individual’s place of duty, not their off-post house or on-post quarters. (Para 2-3c)
- NTVs may be used to transport Gold Star Family members for certain events where such use is to transport family members to events in which they will actively participate. Such uses should be reviewed by the Legal Advisor in advance.

Penalties for civilians include a mandatory 30-day suspension without pay; Soldiers may be punished under the UCMJ, as appropriate.

PRIVATE ORGANIZATIONS

Private Organizations (PO) are highly-regulated activities on DoD installations. Certain organizations are exempt from these rules—they include the Combined Federal Campaign and the Boy and Girl Scouts.

The biggest hurdle is the DA rule that “*Private Organizations are not entitled to, and will not receive, Army endorsement by virtue of their contributions to the military community or installation, their promotion or support of Army goals and objectives, or for any other reason.*” AR 210-22, ¶1-5b. There is an overwhelming amount of guidance in this area, including the Joint Ethics Regulation (DoD 5500.7-R) and DoD Instruction 1000.15, as well as Army Regulation 210-22, *Private Organizations on Department of the Army Installations*.

The Rules.

Commanders and 1SGs **may not** do the following:

- ❑ Coerce subordinates into joining POs or participating in PO sponsored events.
- ❑ Appoint subordinates as POCs for PO membership drives.
- ❑ Award privileges (e.g. a four-day pass) for achieving certain membership rates (e.g. “100% membership”).
- ❑ Grant preferential treatment to any PO; what you do for one, you must do (or remain prepared to do) for all similar types of POs.
- ❑ Endorse a membership or fundraising drive or event. To this end, DA specifically prohibits allowing certain POs to routinely conduct briefings at official functions or mandatory training. AR 210-22, ¶ 4-2a(5). This includes urging membership at unit formations, etc.
- ❑ Using their official position to state or imply official endorsement of any PO.
- ❑ Allow the use of government resources (i.e., provide logistical support) to support a PO fundraising event unless such support is approved, in advance and in writing, by the SJA.
- ❑ Co-sponsor an event with a PO without prior written approval from the SJA.

Commanders and 1SGs **may**:

- ❑ Encourage soldiers to join POs in general terms, without reference to specific organizations.
- ❑ Participate in POs in their private, individual capacities.
- ❑ Allow posting of membership information on non-official bulletin boards or placement of brochures in common areas, provided all POs interested have equal access.

As the rules illustrate, this is an easy area in which to exceed the strict boundaries of the applicable rules. *Consult with the Legal Center if you have any questions!*

UNIT / INFORMAL FUNDS

Informal funds, which include “refrigerator funds,” must serve a specific purpose. They cannot be used to circumvent other fundraising, ethical, or fiscal prohibitions.

General Guidelines:

- ❑ Informal funds are command-authorized private organizations (POs). POs are governed by AR 210-22 (see previous page).
- ❑ Activities, membership, and funds are limited in scope.
 - **Example:** office coffee funds, cup and flower funds, and annual picnic funds.
- ❑ Membership in the fund is voluntary.
- ❑ Informal funds are subject to specific guidelines:
 - A single individual is responsible for fund custody, accounting, and documentation. The individual must advise the commander annually of the fund's financial status.
 - Unit resources may not be used to support informal funds.
 - **Example:** Do not use gov’t vehicles to make the resupply runs for the refrigerator funds.
- ❑ Use of funds generated is limited to expenses consistent with the purpose and function of the fund. No cross-leveling funds.
 - **Example:** The office coffee fund may be used to replenish the coffee station (coffee, filters, sugar, creamer, cups, spoons, etc.) or replace equipment (coffee maker, etc). However, any excess funds raised by the coffee fund may not then be placed into another fund (like the cup and flower fund).
- ❑ Operation of the fund will be consistent with DoDD 5500.7-R, the Joint Ethics Regulation.
 - **Example:** Funds will never be run for personal profit nor will they be used to circumvent other fiscal restraints like using the coffee fund to subsidize the purchase of unit coins used as awards.
- ❑ Excess funds that cannot be rolled back into the fund consistent with the fund’s purpose should be donated to charity (e.g., AER) to avoid violations of the above guidance.
- ❑ Informal funds are not required to have a constitution and bylaws.
- ❑ An informal fund cannot gain tax-exempt status unless it has a constitution or similar organizing document.
- ❑ Assistance in drafting a sample constitution and bylaws (both relatively simple documents) is available from the Legal Center.

INVESTIGATIONS

Commanders have the inherent authority under Rules for Courts-Martial (RCM) 303 to conduct informal inquiries. The informal nature does not alleviate the requirement to read a Soldier suspected of his misconduct his rights (see page 3).

Guidelines for a Commander's RCM 303 inquiry:

- ❑ Prior to initiating any investigation, the commander should talk to the SJA. This will help avoid potential pitfalls that could later hinder the use of any evidence uncovered during the investigation.
- ❑ The investigations may be as “informal” as an oral interview of a single witness.
- ❑ The investigations may be as “formal” as having multiple witnesses submit written statements (using either a DA Form 2823, Sworn Statement or a Memorandum For Record format).
- ❑ The commander may either conduct the inquiry himself, or direct a subordinate officer or senior NCO (usually E7 or above; check with the ATCLC) to so.
- ❑ As with all investigations, the investigating officer must be senior to anyone he is investigating who is suspected of misconduct.

Other Appointed Investigations:

- ❑ Officers appointed as investigating officers (“15-6 Investigations,” safety investigations, reports of survey) must make the ATCLC their first stop.
- ❑ These investigations may be technically formal or informal.
- ❑ Officers may be appointed by either the S1 or S4, by order of the Commander.

PRE-DEPLOYMENT ISSUES

No Soldier can be ordered to “go to JAG and get a will or power of attorney.” The decision to do is a personal decision. However, Soldiers may be directed to come to the OSJA and discuss whether or not they need either document (or other documents) prior to deploying. **In any case, the soldier should come to the ATCLC as far in advance of deployment as possible—drafting a worthwhile will that is a functioning part of an estate plan is not a simple process and may take multiple days/visits.**

Wills. Not all Soldiers require a will before they deploy.

As a general rule, the following Soldiers need a will:

- ❑ Married Soldiers with dependent/minor children (*the will is **the** critical document for naming a guardian*),
- ❑ Soldiers who have dependent/minor children (even if they are not married),
- ❑ Soldiers who are married, but separated/getting divorced and want to minimize what their wife gets, and/or
- ❑ Soldiers with no surviving family members (parents, siblings, or children) who have identified a specific, non-family member whom they wish to leave their estate to.

As a general rule, the following Soldiers do not need a will:

- ❑ Married Soldiers with no dependent/minor children,
- ❑ Single Soldiers whose parents are alive and, if they die, want everything to go to their parents in equal shares (50% each),
- ❑ Single Soldiers whose parents are dead, but have a brother(s) and/or sister(s) and they want everything to go to their siblings in equal shares, and/or,
- ❑ Single Soldiers with no family, no children and truly don’t care what happens to their stuff when they die.

A will is part of an estate plan—it is not a stand-alone document.

- ❑ Soldiers must also change their SGLI, especially if they set up a trust in their will; this is a PAC/S1 function.
- ❑ Soldiers must change the beneficiaries on any commercial life insurance policies they hold; they must do so separately with the insurance company.

Powers of Attorney (POA). There are two types of POAs, special (SPOA) and general (GPOA). We encourage soldiers to avoid giving GPOAs; it is better to craft a half-dozen SPOAs that narrowly grant certain necessary authorities than draft one, broad GPOA that may be abused at the Soldier’s expense.

General POAs. Give the designee the authority to do ANYTHING on the Soldier’s behalf. Some local businesses, banks, etc., will not accept GPOAs due to the ease with which they can be abused.

Special POAs. Grant the designee the authority to accomplish a specific task (or tasks) such as filing income taxes, chasing checks, signing for government quarters, purchasing a specific car, etc. Many local businesses, banks, etc., require a SPOA in lieu of a GPOA.

SURRENDER OF MILITARY PERSONNEL TO LAW ENFORCEMENT

It is the policy of the Army, IAW AR 630-10 and AR 190-9, to cooperate with civilian authorities in surrendering military personnel facing civilian criminal charges, unless the best interests of the Army will be prejudiced. It is contrary to policy to reassign a soldier merely to make him available for apprehension or prosecution by civilian authorities. Surrender of soldiers to foreign civilian law enforcement officials is effected IAW AR 27-50, international agreements, and local directives.

1. **CONUS.** As a general rule, soldiers are taken into custody by civilian authorities in one of two manners. First a soldier may be arrested for committing an “on-view” offense. This is an offense committed in the presence of a peace officer, such as driving under the influence, possession of illegal narcotics, or distribution of illegal narcotics to an undercover peace officer. If the offense is not committed in the presence of a peace officer, or the officer decides to file the case with the local authorities without taking the offender into custody, a warrant is issued for the offender/soldier when either a complaint or indictment is filed in a court having jurisdiction over the offense. If the soldier has not been arrested “on-view” the local law enforcement officials will seek to take the soldier into custody on the warrant. The law enforcement agency seeking to apprehend the soldier should coordinate with the soldier’s commander to effect apprehension of the soldier. If the law enforcement agency is from another state or country, the process is referred to as extradition. Commanders should assist in the expeditious delivery of a soldier to civilian authorities when legally sufficient documentation is provided. Once a soldier has been arrested for a civilian criminal offense whether by warrant or in the presence of a peace officer, the soldier must post a bond in order to be released from confinement pending disposition of the criminal charge. The bond may be a cash bond, surety bond, or even a personal recognizance bond. Commanders should never post bond for a soldier in their command, nor should soldiers in the unit be encouraged or allowed to raise money to post bond. Occasionally when a surety has posted bond, the surety will request the court having jurisdiction over the criminal matter to allow the surety to withdraw from the bond and for the soldier to be rearrested. There is no statutory authority for commanders to deliver a soldier to a bondsman or surety. The bondsman or surety must coordinate with the installation SJA and the commander of the soldier prior to attempting to apprehend the soldier. Additionally, the military police should provide assistance throughout the actual apprehension process. The following points are applicable in each of the above scenarios:

- a. The soldier remains assigned to the parent unit following arrest/surrender.
- b. The CG for Human Resources Command, CG HRC-St Louis, and the CG National Guard Bureau, if applicable, must be notified of the surrender of a soldier.
- c. Soldiers assigned in Alaska and Hawaii are processed the same as CONUS soldiers.

2. **OCONUS.** Requests for return and surrender of soldiers assigned OCONUS are referred to the soldier’s special court-martial convening authority (SPCMCA) for approval. Approved requests are processed IAW AR 630-10 and AR 190-9. Requests for ARNGUS and USAR personnel are referred to the National Guard Bureau and Human Resources Command-St Louis as appropriate.

- a. The battalion commander or first field grade officer in the soldier’s chain of command should initiate flagging action per AR 600-8-2, if appropriate; request TDY orders for the soldier (see AR 630-10, paragraph 7-3(3)(b)); request travel for the soldier; notify the installation PMO of the flight arrangements; provide an escort for the soldier to the point of embarkation; and when necessary, after a careful and thorough review of the soldier’s temperament and the nature of the civilian charges, provide an escort for the soldier from the unit to the point of debarkation. The commander should also notify the SPCMCA of the scheduled return and arrangements. The point of debarkation is defined by the JFTR as

“the destination airport at which the traveler leaves an international/transoceanic flight.” The soldier is normally flown to Philadelphia, PA. When requesting TDY orders for the soldier use the following fund cites: 215 2010-01-1100 and P6 A00-0000-PAOT S 99999. The number of TDY days will be indefinite and no per diem will be authorized.

b. Human Resources Command is responsible for coordination, and when necessary, attachment of the soldier to an installation near the point of debarkation. HRC notifies the personnel command where the soldier will be attached pending civilian court proceedings. HRC authorizes attachment of the soldier to an installation nearest the requesting state where the soldier is extradited, waives extradition, or is pending hearing in a state other than the point of debarkation.

c. The SPCMCA directs the unit and supporting staff to assist in the expeditious return of the soldier to a debarkation point in CONUS at government expense and notifies the personnel command and CG of the request to return the soldier. Lastly, upon approval of the request, the SPCMCA notifies the CG, HRC of the flight arrangements for the soldier, allowing sufficient opportunity for coordination with the appropriate personnel and authorities.

d. The costs of transporting the soldier from the point of debarkation, as defined above, to the locality of the civilian proceedings are the responsibility of the agency requesting extradition or surrender of the soldier.

- Example: A law enforcement agency in Dallas, Texas requests extradition of a soldier stationed in Grafenwoehr, Germany. The soldier’s commander requests transportation on an international flight to return the soldier. The soldier is booked on a flight to Philadelphia, PA. Philadelphia is the point of debarkation. The law enforcement agency in Dallas is responsible for the cost of transportation from Philadelphia to Dallas.

e. Additional notifications: Notify 1st PERSCOM USAROJA. The following individuals should also be contacted: James Crumley, Policy Analyst, Office of PM General (703) 692-6721; Richard White, HRC Ops Mgt Division (703) 325-4814.

DRIVING UNDER THE INFLUENCE – REPRIMAND POLICY

Driving under the influence of alcohol or drugs threatens the safety of soldiers and the community. Commanders will take appropriate action to investigate and promptly respond to incidents of driving under the influence. GOMORs are mandatory in some instances and discretionary in others. A final MP report or blood alcohol test is not required to initiate a General Officer Memorandum of Reprimand (GOMOR). However no filing determination should be made without a final MP report or blood test result. All incidents of driving under the influence by an officer, either commissioned or warrant, will be reported up the chain of command.

1. Mandatory GOMOR: A GOMOR will be issued to soldiers of all ranks in the following alcohol or drug intoxication driving incidents (regardless of location):

a. Refusal to take or complete a lawfully requested blood, breath or urine test when there is reasonable belief of driving under the influence.

b. Driving or being in physical control of a motor vehicle when a lawfully requested chemical test reflects the presence of illegal drugs.

c. Conviction for driving while intoxicated or driving under the influence of either drugs or alcohol at a judicial or nonjudicial (Article 15) proceeding.

d. Driving or being in physical control of a motor vehicle when the blood alcohol content is 0.10 grams of alcohol per 100 milliliters of whole blood (BAT) or 210 liters of breath (BAC) or higher.

e. Driving a POV during a period when the USAREUR license was suspended or revoked or after being declared ineligible.

f. Driving or being in physical control of a motor vehicle with a BAT/BAC or .05 or higher for a second time within a five year period.

g. Driving or being in physical control of a motor vehicle with a .03 to .099 BAT/BAC plus an alcohol-related operational fault, e.g., swerving, losing control over the vehicle while road conditions are good or other circumstances that would indicate an alcohol-related driving failure.

2. Discretionary GOMOR: A GOMOR may be issued to soldiers of all ranks whenever the specific facts of an incident warrant a reprimand.

3. Command Responsibilities. Commanders will read and be familiar with the 7th ATC circular on driving under the influence.

a. All commanders will forward any information or reports of alcohol or drug intoxication driving incidents to the officer-in-charge (OIC) of the ATCLC immediately upon notice of such incident.

b. The first commander in the soldier's chain of command will utilize resources such as the MP blotters and reports to monitor driving under the influence incidents. Upon learning of an incident the unit commander will immediately notify the OIC of the ATCLC. The unit commander will also take the following actions:

(1) Suspend favorable personnel actions while a GOMOR is pending.

(2) Suspend or revoke the offender's USAREUR POV operator's license.

(3) Refer active duty personnel to ASAP for evaluation within 10 days of the incident.

(4) Initiate administrative separation paperwork IAW AR 600-85 for repeat offenders within a calendar year.

After review of the service records of an offender, commanders should determine whether any of the following additional actions are warranted:

(5) Administrative reduction.

(6) Bar to reenlistment.

(7) Administrative discharge UP AR 600-8-24 (officers) or AR 635-200 (enlisted).

(8) Nonjudicial punishment or court-martial.

c. The servicing Law Center will notify either the unit commander or first sergeant when the issuing authority has signed a GOMOR for a unit soldier. Commanders will arrange for pick up and

service of GOMORs within one duty day following notification. If the unit is unable to serve the GOMOR within this time requirement the commander or first sergeant will notify the servicing Law Center of the reason for delay.

(1) Soldiers have 10 calendar days to submit any matters if they so elect. Commanders or first sergeants should notify the soldier of this requirement. Soldiers should also be notified that failure to submit any additional matters within the 10 day period may result in disposition without the soldier's input.

(2) If the soldier elects to submit matters, but fails to do so within the 10 day period, the commander or first sergeant will prepare a memorandum for record (MFR) stating the soldier has failed to submit additional matters within the 10 days and attach the MFR to the commander's recommendation, referred to below.

d. The unit commander will review the GOMOR and consider all evidence, including matters submitted in rebuttal and then make a disposition recommendation to the general officer issuing the reprimand. The unit commander must complete his review, make a filing recommendation, and forward the packet to the next reviewing commander NLT 7 calendar days after the soldier elects not to respond or the date the response is due. Before forwarding the packet, the unit commander will obtain and include copies of the following documents:

- (1) Soldier's ERB or ORB, whichever is appropriate.
- (2) The administrative flag placed on the soldier IAW AR 600-8-2.
- (3) Documents reflecting any adverse administrative or punitive actions taken related to the driving under the influence incident.
- (4) All derogatory documents and other pertinent documents in the soldier's unit file.

UNIT COMMANDER RESPONSIBILITIES FOR PRISONER CONFINEMENT AND RELEASE FROM CONFINEMENT

The United States Army Confinement System provides a uniform system of incarceration and correctional services for soldiers. AR 190-47 provides the primary guidance for the operation of the U.S. Army Confinement System, and USAEUR 190-47 provides for the unique requirements in Europe. The two regulations should be read together.

The United States Army Confinement Facility – Europe (USACF-E) in Mannheim, Germany, provides pretrial and short-term, post-trial confinement support, and is the only authorized permanent place of confinement in USAEUR. Prisoners requiring temporary release which requires an overnight stay may temporarily stay in an MP D-cell.

When a soldier under your command is in confinement, the soldier remains your responsibility until the soldier is physically transferred to a correctional facility in CONUS. The unit commander is responsible for providing for the prisoner's legal, administrative, financial, disciplinary and other needs in coordination with the Commander, USACF-E, including transportation to and from necessary appointments and escort guards to ensure the appropriate control and custody.

Escort Guards and Transportation. Unit commanders must provide escort guards and Government transportation (in a military vehicle) for initial confinement and movement up to, but not including,

transfer to a CONUS confinement facility. The USACF-E will brief escort guards on temporary release procedures. Escort guards must:

1. not be friends of the prisoner and may not have a connection with the prisoner's crime or alleged crime;
2. be of a rank equal to or greater than the prisoner being escorted, and an NCO for enlisted prisoners;
3. have a temporary-release request signed by the unit commander, which states the purpose and duration of the release, and the name, rank, and SSN of the person authorized to receive the prisoner;
4. not be armed, except in extreme cases. While the need to provide armed escorts is at the commander's discretion, the commander should request guidance from the Chief, Correctional Supervision Branch, USACF-E. If an armed escort is needed, the escort guard must be qualified for the assigned weapon, and may only carry at 9-millimeter, .45-caliber, or .38 caliber handgun.

The USACF-E may provide escort guards for local temporary release of prisoners whose commands are stationed or deployed outside Germany when resources are available, and when they are not required for more than 24 hours. Commanders who need escort guards must include a justification for the request in the prisoner temporary-release request. The request must be sent to the Commander, USACF-E, at least 48 hours before the scheduled temporary release.

Personal Property. Prior to confinement, the unit commander or a designated representative (staff sergeant or above) must conduct a physical inventory of the prisoner's personal clothing and property. A signed copy of the inventory must accompany the prisoner to USACF-E. Commanders must ensure that the property is shipped and stored as necessary.

- Personal property and household goods will be shipped under Joint Federal Travel Regulations, Volume I, paragraphs U5125-D, U5240-D, U5360, and AR 190-47.
- POVs will be handled according to UR 190-1 (POVs will not be brought to USACF-E).
- Privately owned firearms will be handled according to UR 190-6.

Clothing. Unit commanders must ensure that prisoners have the prescribed basic issue items with them at the time of confinement. Shortages must be issued by the unit within 72 hours. The unit may obtain the clothing by casual payment, charge sale or IAW AR 700-84, para. 5-14.

A prisoner must have:

1. a complete, serviceable, Army green, class-A winter or all-season uniform with all authorized awards, decorations, and identification tags.
2. items listed in Table 1.

Prisoners may not bring health care and comfort items. Personal valuables that fit in a 12-by 16-inch manila envelope may accompany the prisoner and will be kept at USACF-E.

Documentation Requirements. Unit commanders are responsible for providing the necessary documents to the confinement facility. If any required records are lost, unit commanders must obtain temporary records from the servicing personnel detachment. Unit commanders must also request records of soldiers who have been dropped from the rolls because of desertion.

An OPF for enlisted members should be requested from Commander, United States Army Enlisted Records and Evacuation Center, ATTN: PCRE-RP, 8899 E. 56th St., IN 46246-5301. A copy of the request should be sent to USACF, ATTN: Prisoner Service Branch, Unit 29723, APO AE 09028.

The unit commander is responsible for delivering to the USACF-E the following records:

1. DD Form 497 (confinement Order)
2. Medical and dental records
3. Form 2A (ACT) (Active Duty Military ID Card)
4. Personal property inventory (signed by staff sergeant or above)

Pretrial Confinement. At the time of initial pretrial confinement, the commander who ordered the pretrial confinement will provide the military magistrate with a DD Form 458 (Charge Sheet) (AR 27-10, para 10B), if already prepared, and DA Form 5112-R (checklist for pre-trial confinement).

1. The military magistrate will decide whether to approve or discontinue pretrial confinement within 7 days. Commanders will provide the military magistrate with witnesses and military-police statements, United States Army Criminal Investigation Command reports, and other evidence establishing probable cause that the accused committed an offense that may be tried by a court-martial and that confinement is required.
2. Commanders must provide the military magistrate with AE 27-10B-R (Advice to Accused Upon Confinement) completed by the advising counsel and signed by the counsel and the accused before confinement.
3. To release a prisoner from pretrial confinement, the unit commander, military magistrate, or staff judge advocate trial counsel must send a memorandum to the commander, USACF-E, stating the reason and desired date of release. Reasons for release must be one of the following: charges were dropped, prisoner was acquitted of charges, administrative discharge was approved, pretrial confinement is no longer considered necessary, or other (must specify).

Post-Trial Confinement. For post-trial confinement, unit commanders must also provide the following documents to the confinement facility:

1. DA Form 2A (Personnel Qualification Record, Part 1 – Enlisted Peacetime) and DA Form 2-1 (Personnel Qualification Record – Part II)
2. DA Form 201 (Military Personnel Records Jacket, U.S. Army)
3. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag))
4. DA Form 4430-R (Report of Result of Trial) or DD Form 2239 (Record of trial by Summary Court Martial)
5. DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status)
6. Education records
7. Reassignment orders (on request) for transfer to a correctional facility in CONUS

Personal mail. The unit must send the prisoner's mail through normal postal channels to Unit LL, APO AE 09028-3810. If the prisoner is in CONUS, the unit must send mail directly to the CONUS correctional facility where the prisoner is confined.

Command Visits. USAEUR commanders are responsible for ensuring confined personnel assigned to their subordinate units are visited at least monthly by NCOs (sergeant first class or higher), or officers in the prisoner's chain of command until the prisoner is transferred to CONUS correctional facility or released from confinement. Commanders of battalion or higher-level units may designate one officer to represent multiple units of their commands.

Commanders or their designated representatives must notify the Commander, USACF-E, 24 hours before the date and time they would like to make a command visit. Command visits may be conducted M-F from 0730 – 1630 or from 1300 to 1545 on weekends and U.S. Holidays.

Temporary Releases. The unit commander must coordinate with USACF-E staff at least 24 hours before the requested time of release. The unit must coordinate with the base support battalion (BSB) provost marshal for overnight, temporary release of prisoners in D-cells. The BSB provost marshal will provide a DD Form 629 (Receipt for Prisoner or Detained Person) for these prisoners. The USACF-E will confirm with the BSB provost marshal's office that it is prepared to receive and hold the prisoner before the prisoner leaves the USACF-E. Prisoners may not be kept outside the USACF-E more than 72 hours without Commander, USACF-E approval.

The Commander, USACF-E, will approve requests, as appropriate, for temporary release of prisoners detained for German trial or other German judicial proceedings.

Discipline. Unit commanders maintain UCMJ authority over a prisoner until the prisoner is transferred to a CONUS correctional facility. The Commander, USACF-E will refer disciplinary action requiring UCMJ action to the unit commander. The Commanding General, 21st TSC, may delegate authority to the Commander, USACF-E, to impose administrative disciplinary measures, including disciplinary segregation, reduction in custody grade, and forfeiture of accrued good-conduct time.

Escape and Return From Escape. Once notified by the Commander, USACF-E that a prisoner escaped, the unit commander must comply with AR 190-9, AR 630-10, and DA Pamphlet 600-8. If the location of the prisoner is known, contact the MPs, or the host nation police if the prisoner is off a military installation. After the escaped prisoner is in custody, and the USACF-E has been notified, the unit is responsible for returning the prisoner to the USACF-E.

Permanent Releases. The USACF-E will notify the prisoner's chain of command 10 days prior to the prisoner's scheduled release. The unit must send a memorandum providing the names and social security numbers of individuals assigned to pick up the prisoner and the time they will arrive (prisoners are released during duty hours unless otherwise coordinated with the USACF-E). The individuals should be NCOs. Government transportation is not required.

Prisoner Transfer From USAER to CONUS. The Commander, USACF-E will coordinate and direct the prisoner transfers to CONUS (including providing escorts). Prisoners are transferred to CONUS every 90 days or as directed by HDQA. HDQA determines which CONUS correctional facility a prisoner will be transferred to based on the prisoner's gender and the length of service. Prisoners with 30 days or less left in confinement on the anticipated transfer date will remain at the USACF-E until they complete their sentence.

The prisoner needs a memorandum from their SJA that states whether or not there are any legal issues that would prevent the prisoner from departing USAEUR. Once the memorandum is released indicating that the prisoner has been approved for transfer to CONUS, the SJA will return the prisoner's DA Form 201, or related documents to the servicing personnel detachment or other unit personnel section.

The USACF-E will give the unit a request-for-orders memorandum with additional requirements for transferring the prisoner from the USACF-E to a CONUS correctional facility. Within 5 workdays, the unit commander must prepare and deliver reassignment orders to the Prisoner Shipment Section, USACF-E. Orders may be faxed (382-5407/4228) or mailed (Commander, United States Army Confinement Facility – Europe, ATTN: Prisoner Shipment Section, Unit 29723, APO AE 09028).

Hospitalized prisoners. Hospitalized prisoners are treated as normal temporary releases. Unit commanders must provide guards for hospitalized prisoners. In emergencies, the USACF-E may provide guards initially until they can be relieved by members of the prisoner's unit. The USACF-E, will inform guards of their responsibilities for custody and control of the prisoner.

If treatment is not available in USAREUR, the prisoner may be evacuated to CONUS through medical channels, which will be processed by the originating hospital. In such cases, the hospital commander will immediately notify the Commander, USACF-E. The Commander, USACF-E will coordinate the evacuation with the unit commander and the SJA servicing the court-martial jurisdiction in which the prisoner was or is to be tried. Requests for resolution of disagreements should be submitted to the Judge Advocate, HQ USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014.

The unit is responsible for providing escort guards. Escort Guards must carry sealed records and associated papers as prescribed in AR 190-47 with them to the hospital in CONUS. HDQA will determine whether the prisoner will return to USACF-E at the completion of treatment, or whether the prisoner will be transferred to a CONUS correctional facility.

Unit commanders are responsible for the care and administration of family members of prisoners. When the prisoner is transferred CONUS while the family are in USAREUR, family members are authorized travel according to Joint Federal Travel Regulations, volume I, and US 1 to AR 55-46.

TABLE 1

✓	Required Items for Prisoners	Male	Female
	Bag, duffel	1	1
	Belt, trousers	1	1
	Boot, combat	2	2
	Buckle, black	1	1
	Buckle, brass	1	0
	Cap, camouflage	2	2
	Cap, garrison	1	1
	Coat, all weather	1	1
	Coat, camouflage, hot weather	1 (2 if in pretrial confinement)	1 (2 if in pretrial confinement)
	Coat, camouflage, temperate	1 (2 if in pretrial confinement)	1 (2 if in pretrial confinement)
	Coat camouflage, cold weather	1	1
	Coat, poly/wool, Army green (AG)	1	1
	Drawers, brown	7	0
	Coat, black, unisex	1	1
	Gloves, inserts (pair)	2	2
	Gloves, shell (pair)	1	1
	Handbag	0	1
	Necktab, long/short sleeve	0	1 each
	Necktie	1	0
	Shirt, long/short sleeve	1 each	1 each
	Shoes, oxford (pair)	1	1
	Skirt, poly/wool	0	1
	Slacks, poly/wool	0	1
	Socks, cotton/nylon	3	0
	Socks, wool	7	7
	Towel, bath	4	4
	Trousers, camouflage, hot weather	1 (2 if in pretrial confinement)	1 (2 if in pretrial confinement)
	Trousers, camouflage, temperate	1 (2 if in pretrial confinement)	0 (2 if in pretrial confinement)
	Trousers, poly/wool, AG	1	0
	Undershirt, brown	7	7
	Undershirt, white	2	0
	Bag, barracks	1	1

	Drawers, cold weather	1	1
	Insignia, branch of service, enlisted personnel (EP)	1	1
	Insignia, U.S. (EP)	1	1
	Insignia, hat (EP)	0	1
	Undershirt, cold weather	1	1
Note: During hostilities, when soldiers in theater are required to wear protective equipment (Kevlar helmet, flak vest, MOPP gear with protective mask), prisoners will bring protective equipment to the USACF-E.			

PRE-TRIAL CONFINEMENT CHECKLIST

✓	Required Document or Item	Source	When Required
	DD Form 2707 (confinement)	Law Center	Day of Confinement
	Medical Records or statement from health clinic that no medical record is on file.	Health Clinic	Within 72 hours
	Dental Record or statement that no dental record is on file.	Dental Clinic	Within 72 hours
	Initial Issue Clothing (inventory prior to confinement, and missing items must be noted as “statement of charges pending”)	Unit	Within 72 hours
	Personal Property Inventory (signed by owner & supply NCO or supervisor (E5 and above))	Unit	Day of Confinement
	ID Card (must be current)	Unit	Day of Confinement
	ID Tag (2 pair)		
	DA Form 5112-R	Military Magistrate	Day of Confinement
	DD Form 458 (charge sheet) – may be waived by confinement facility administrative office.	Law Center	Not due on day of Confinement
	AE Form 27-10B-R		Day of Confinement

POST-TRIAL CONFINEMENT CHECKLIST

✓	Required Document or Item	Source	When Required
	DD Form 2707 (confinement)	Law Center	Day of Confinement
	DD Form 458 (Charge Sheet)	Law Center	Day of Confinement
	DA Form 4430 (Result of Trial) or DD Form 2329 (Record of Summary Court Martial)	Law Center	Day of Confinement
	DD 2704 (Victim/Witness Certification)	Law Center	Day of Confinement
	MP/CID Report, if available	Law Center	Within 72 hours
	DA Form 4187 (signed by company commander, to Commander, 9 th Military Police Detachment, Unit 29724, APO AE 09028)	Unit	Day of Confinement
	DA Form 268 (Report to Suspend Favorable Personnel Actions (flag)) (signed by company commander)	Unit	Day of Confinement
	ID Card (must be current)	Unit	Day of Confinement
	ID Tag (2 pair)		
	Medical Records or statement from health clinic that no medical record is on file.	Health Clinic	Within 72 hours
	Dental Record or statement that no dental record is on file.	Dental Clinic	Within 72 hours
	Mental Health File, if available	Mental Health Clinic	Within 72 hours
	DA Form 201 (military record)	PSB	Day of Confinement
	Clear/Hold Message	Law Center	
	Initial Issue Clothing (inventory prior to confinement, and missing items must be noted as “statement of charges pending”)	Unit	Within 72 hours
	Personal Property Inventory (signed by owner & supply NCO or supervisor (E5 and above))	Unit	Day of Confinement
	Education Record, if available	Unit	Within 72 hours

UNIT PREPARATION FOR COURTS-MARTIAL

Occasionally, units are tasked to provide escorts and/or a bailiff for courts martial. The following information is intended to provide basic guidance for commanders in assigning these tasks to soldiers in their command.

1. Escorts.

- a. Two NCOs must escort the accused. If the accused is an NCO, then the escorts must be senior in grade to the accused. The escorts should be able to physically restrain the accused in the event that the accused attempts to escape.
- b. Once inside the judicial center/court room area, at least one escort must stay with the accused at all times. Thus, if the accused goes to the restroom, one of the escorts should be outside waiting for her or him to exit.
- c. Prior to trial, the escorts must call the Provost Marshal Office's Operations NCO at 475-7652 to pick-up hand and leg cuffs/irons. If confinement is adjudged, the escorts are to secure the accused with the hand and leg irons before taking her or him to the servicing TMC for the confinement physical and then to the Provost Marshal's Office for transportation to a confinement facility.
- d. Escorts may wear BDU's to perform their duties.

2. Bailiff.

- a. The bailiff should be an NCO. She or he should have a good command voice and presence. The bailiff should be able to handle any physical disruption that may occur in the courtroom.
- b. The Rules of Practice Before Army Courts Martial Court, contains a section that promulgates formal guidance for soldiers serving as bailiffs. Ensure the bailiff reads and understands its contents before the court martial. A copy may be obtained from the trial counsel representing the government at the court martial.
- c. The bailiff must be in her or his Class A uniform.